

1                         UNITED STATES DISTRICT COURT  
2                         FOR THE NORTHERN DISTRICT OF OHIO  
3                         EASTERN DIVISION

4                         IN RE: NATIONAL                       )  
5                         PRESCRIPTION                       ) MDL No. 2804  
6                         OPIATE LITIGATION               )  
7                         \_\_\_\_\_) Case No.  
8                         )                                       ) 1:17-MD-2804  
9                         THIS DOCUMENT RELATES        ) Hon. Dan A.  
10                        TO ALL CASES                       ) Polster

11                        THURSDAY, JULY 11, 2019

12                        HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
13                        CONFIDENTIALITY REVIEW

14                        - - -  
15                        Videotaped deposition of Michael  
16                        Mapes, held at the offices of The Mining  
17                        Exchange, A Wyndham Grand Hotel & Spa,  
18                        8 South Nevada Avenue, Colorado Springs,  
19                        Colorado, commencing at 9:41 a.m., on the  
20                        above date, before Carrie A. Campbell,  
21                        Registered Diplomate Reporter and Certified  
22                        Realtime Reporter.

23                        - - -

24                        GOLKOW LITIGATION SERVICES  
25                        877.370.3377 ph | 917.591.5672 fax  
                         deps@golkow.com

1 APPAREANCES :  
2  
3 LANIER LAW FIRM, P.C.  
4 BY: W. MARK LANIER  
5 wml@lanierlawfirm.com  
6 RACHEL LANIER  
7 rachel.lanier@lanierlawfirm.com  
8 ROBERT LEONE  
9 robert.leone@lanierlawfirm.com  
10 10940 W. Sam Houston Parkway N., Suite 100  
11 Houston, Texas 77064  
12 (713) 659-5200  
13  
14 GREENE, KETCHUM, FARRELL, BAILEY  
15 & TWEEL LLP  
16 BY: PAUL T. FARRELL, JR.  
17 paul@greeneketchum.com  
18 419 Eleventh Street  
19 Huntington, West Virginia 25701  
20 (314) 525-9115  
21  
22 MCHUGH FULLER LAW GROUP  
23 BY: MICHAEL J. FULLER, JR.  
24 mike@mchughfuller.com  
25 AJ ELKINS  
26 aj@mchughfuller.com  
27 (VIA REALTIME STREAM)  
28 97 Elias Whiddon Road  
29 Hattiesburg, Mississippi 39402  
30 (601) 261-2220  
31  
32 SIMMONS HANLY CONROY LLC  
33 BY: LAURA L. FITZPATRICK  
34 lfitzpatrick@simmonsfirm.com  
35 112 Madison Avenue  
36 New York, New York 10016-7416  
37 (212) 784-6400

1 BARON & BUDD, P.C.  
2 BY: MARK PIFKO  
3 mpifko@baronbudd.com  
4 JAY LICHTER  
5 jlichter@baronbudd.com  
6 (VIA REALTIME STREAM)  
7 STERLING CLUFF  
8 scluff@baronbudd.com  
9 (VIA REALTIME STREAM)  
10 15910 Ventura Boulevard, Suite 1600  
11 Encino, California 91436  
12 (818) 839-2333  
13 Counsel for Plaintiffs  
14  
15 NAPOLI SHKOLNIK, PLLC  
16 BY: HUNTER SHKOLNIK  
17 hunter@napolilaw.com  
18 (VIA TELECONFERENCE)  
19 SHAYNA SACKS  
20 ssacks@napolilaw.com  
21 (VIA REALTIME STREAM)  
22 360 Lexington Avenue, 11th Floor  
23 New York, New York 10017  
24 (212) 397-1000  
25 Counsel for Cuyahoga County  
26  
27 US DEPARTMENT OF JUSTICE  
28 BY: JAMES R. BENNETT, II  
29 james.bennett4@usdoj.gov  
30 RENÉE BACCHUS  
31 renee.bacchus@usdoj.gov  
32 United States Courthouse  
33 801 West Superior Avenue, Suite 400  
34 Cleveland, Ohio 44113  
35 (216) 622-3988  
36 and  
37 US DEPARTMENT OF JUSTICE  
38 BY: MARIAMA C. SPEARS  
39 mariama.c.spears@usdoj.gov  
40 8701 Morrisette Drive  
41 Springfield, Virginia 22152  
42 (202) 598-6204  
43 Representing the US DOJ and the Witness

1 REED SMITH LLP  
2 BY: SHANNON MCCLURE  
3 smcclure@reedsmit.com  
4 ABIGAIL PIERCE  
5 abigail.pierce@reedsmit.com  
6 1717 Arch Street, Suite 3100  
7 Philadelphia, Pennsylvania 19103  
8 (215) 851-8100  
9 Counsel for AmerisourceBergen  
10

11 WILLIAMS & CONNOLLY LLP  
12 BY: JENNIFER G. WICHT  
13 jwicht@wc.com  
14 BRAD MASTERS  
15 bmasters@wc.com  
16 725 Twelfth Street, N.W.  
17 Washington, DC 20005  
18 (202) 434-5331  
19 Counsel for Cardinal Health, Inc.  
20

21 COVINGTON & BURLING LLP  
22 BY: CHRISTOPHER K. EPPICH  
23 ceppich@cov.com  
24 1999 Avenue of the Stars  
25 Los Angeles, California 90067  
26 (424) 332-4764  
27

28 and  
29  
30 BY: MEGHAN E. MONAGHAN  
31 mmonaghan@cov.com  
32 850 Tenth Street, NW  
33 Washington, DC 20001-4956  
34 (202) 662-6000  
35 Counsel for McKesson Corporation  
36 JONES DAY  
37 BY: NEAL J. STEPHENS  
38 nstephens@jonesday.com  
39 PATRICK BEISELL  
40 1755 Embarcadero Road  
41 Palo Alto, California 94303  
42 (650) 739-3939  
43 Counsel for Walmart  
44

1 KIRKLAND & ELLIS, LLP  
2 BY: JENNIFER LEVY  
3 jennifer.levy@kirkland.com  
4 CATIE VENTURA  
5 catie.ventura@kirkland.com  
6 1301 Pennsylvania Avenue, N.W.  
7 Washington, DC 20004  
8 (202) 879-5000  
9 Counsel for Allergan Finance, LLC  
10  
11

12 BARTLIT BECK LLP  
13 BY: KATHERINE SWIFT  
14 kswift@bartlit-beck.com  
15 (VIA REALTIME STREAM)  
16 54 West Hubbard Street, Suite 300  
17 Chicago, Illinois 60654  
18 (312) 494-4400  
19 Counsel for Walgreens  
20  
21

22 DECHERT LLP  
23 BY: ERIK W. SNAPP  
24 erik.snapp@dechert.com  
25 35 West Wacker Drive, Suite 3400  
26 Chicago, Illinois 60601  
27 (312) 646-5800  
28 Counsel for Purdue Pharma  
29  
30

31 ROPES & GRAY, LLP  
32 BY: WILLIAM DAVISON  
33 william.davison@ropesgray.com  
34 800 Boylston Street  
35 Boston, Massachusetts 02199-3600  
36 (617) 951-7000  
37 Counsel for Mallinckrodt & SpecGx  
38  
39

1 BARNES & THORNBURG LLP  
2 BY: WILLIAM A. HAHN, II  
3 William.hahn@btlaw.com  
4 11 South Meridian Street  
5 Indianapolis, Indiana 46204-3535  
6 (317) 236-1313  
7 Counsel for HD Smith  
8  
9 MORGAN, LEWIS & BOCKIUS LLP  
10 BY: JOHN P. LAVELLE, JR.  
11 John.lavelle@morganlewis.com  
12 1701 Market Street  
13 Philadelphia, Pennsylvania 19103-2921  
14 (215) 963-5000  
15 Counsel for Rite Aid  
16  
17 LOCKE LORD LLP  
18 BY: BRANDAN MONTMINY  
19 brandan.montminy@lockelord.com  
20 2200 Ross Avenue, Suite 2800  
21 Dallas, Texas 75201  
22 (214) 740-8445  
23 Counsel for Henry Schein, Inc., and  
24 Henry Schein Medical Systems, Inc.  
25  
26  
27 ZUCKERMAN SPAEDER LLP  
28 BY: ANTHONY M. RUIZ  
29 aruiz@zuckerman.com  
30 (VIA TELECONFERENCE AND STREAM)  
31 1800 M Street NW, Suite 1000  
32 Washington, DC 20036-5807  
33 (202) 778-1800  
34 Counsel for CVS Indiana, LLC, and  
35 CVS RX Services, Inc.  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
8010  
8011  
8012  
8013  
8014  
8015  
8016  
8017  
8018  
8019  
8020  
8021  
8022  
8023  
8024  
8025  
8026  
8027  
8028  
8029  
8030  
8031  
8032  
8033  
8034  
8035  
8036  
8037  
8038  
8039  
8040  
8041  
8042  
8043  
8044  
8045  
8046  
8047  
8048  
8049  
8050  
8051  
8052  
8053  
8054  
8055  
8056  
8057  
8058  
8059  
8060  
8061  
8062  
8063  
8064  
8065  
8066  
8067  
8068  
8069  
8070  
8071  
8072  
8073  
8074  
8075  
8076  
8077  
8078  
8079  
8080  
8081  
8082  
8083  
8084  
8085  
8086  
8087  
8088  
8089  
8090  
8091  
8092  
8093  
8094  
8095  
8096  
8097  
8098  
8099  
80100  
80101  
80102  
80103  
80104  
80105  
80106  
80107  
80108  
80109  
80110  
80111  
80112  
80113  
80114  
80115  
80116  
80117  
80118  
80119  
80120  
80121  
80122  
80123  
80124  
80125  
80126  
80127  
80128  
80129  
80130  
80131  
80132  
80133  
80134  
80135  
80136  
80137  
80138  
80139  
80140  
80141  
80142  
80143  
80144  
80145  
80146  
80147  
80148  
80149  
80150  
80151  
80152  
80153  
80154  
80155  
80156  
80157  
80158  
80159  
80160  
80161  
80162  
80163  
80164  
80165  
80166  
80167  
80168  
80169  
80170  
80171  
80172  
80173  
80174  
80175  
80176  
80177  
80178  
80179  
80180  
80181  
80182  
80183  
80184  
80185  
80186  
80187  
80188  
80189  
80190  
80191  
80192  
80193  
80194  
80195  
80196  
80197  
80198  
80199  
80200  
80201  
80202  
80203  
80204  
80205  
80206  
80207  
80208  
80209  
80210  
80211  
80212  
80213  
80214  
80215  
80216  
80217  
80218  
80219  
80220  
80221  
80222  
80223  
80224  
80225  
80226  
80227  
80228  
80229  
80230  
80231  
80232  
80233  
80234  
80235  
80236  
80237  
80238  
80239  
80240  
80241  
80242  
80243  
80244  
80245  
80246  
80247  
80248  
80249  
80250  
80251  
80252  
80253  
80254  
80255  
80256  
80257  
80258  
80259  
80260  
80261  
80262  
80263  
80264  
80265  
80266  
80267  
80268  
80269  
80270  
80271  
80272  
80273  
80274  
80275  
80276  
80277  
80278  
80279  
80280  
80281  
80282  
80283  
80284  
80285  
80286  
80287  
80288  
80289  
80290  
80291  
80292  
80293  
80294  
80295  
80296  
80297  
80298  
80299  
80300  
80301  
80302  
80303  
80304  
80305  
80306  
80307  
80308  
80309  
80310  
80311  
80312  
80313  
80314  
80315  
80316  
80317  
80318  
80319  
80320  
80321  
80322  
80323  
80324  
80325  
80326  
80327  
80328  
80329  
80330  
80331  
80332  
80333  
80334  
80335  
80336  
80337  
80338  
80339  
80340  
80341  
80342  
80343  
80344  
80345  
80346  
80347  
80348  
80349  
80350  
80351  
80352  
80353  
80354  
80355  
80356  
80357  
80358  
80359  
80360  
80361  
80362  
80363  
80364  
80365  
80366  
80367  
80368  
80369  
80370  
80371  
80372  
80373  
80374  
80375  
80376  
80377  
80378  
80379  
80380  
80381  
80382  
80383  
80384  
80385  
80386  
80387  
80388  
80389  
80390  
80391  
80392  
80393  
80394  
80395  
80396  
80397  
80398  
80399  
80400  
80401  
80402  
80403  
80404  
80405  
80406  
80407  
80408  
80409  
80410  
80411  
80412  
80413  
80414  
80415  
80416  
80417  
80418  
80419  
80420  
80421  
80422  
80423  
80424  
80425  
80426  
80427  
80428  
80429  
80430  
80431  
80432  
80433  
80434  
80435  
80436  
80437  
80438  
80439  
80440  
80441  
80442  
80443  
80444  
80445  
80446  
80447  
80448  
80449  
80450  
80451  
80452  
80453  
80454  
80455  
80456  
80457  
80458  
80459  
80460  
80461  
80462  
80463  
80464  
80465  
80466  
80467  
80468  
80469  
80470  
80471  
80472  
80473  
80474  
80475  
80476  
80477  
80478  
80479  
80480  
80481  
80482  
80483  
80484  
80485  
80486  
80487  
80488  
80489  
80490  
80491  
80492  
80493  
80494  
80495  
80496  
80497  
80498  
80499  
80500  
80501  
80502  
80503  
80504  
80505  
80506  
80507  
80508  
80509  
80510  
80511  
80512  
80513  
80514  
80515  
80516  
80517  
80518  
80519  
80520  
80521  
80522  
80523  
80524  
80525  
80526  
80527  
80528  
80529  
80530  
80531  
80532  
80533  
80534  
80535  
80536  
80537  
80538  
80539  
80540  
80541  
80542  
80543  
80544  
80545  
80546  
80547  
80548  
80549  
80550  
80551  
80552  
80553  
80554  
80555  
80556  
80557  
80558  
80559  
80560  
80561  
80562  
80563  
80564  
80565  
80566  
80567  
80568  
80569  
80570  
80571  
80572  
80573  
80574  
80575  
80576  
80577  
80578  
80579  
80580  
80581  
80582  
80583  
80584  
80585  
80586  
80587  
80588  
80589  
80590  
80591  
80592  
80593  
80594  
80595  
80596  
80597  
80598  
80599  
80600  
80601  
80602  
80603  
80604  
80605  
80606  
80607  
80608  
80609  
80610  
80611  
80612  
80613  
80614  
80615  
80616  
80617  
80618  
80619  
80620  
80621  
80622  
80623  
80624  
80625  
80626  
80627  
80628  
80629  
80630  
80631  
80632  
80633  
80634  
80635  
80636  
80637  
80638  
80639  
80640  
80641  
80642  
80643  
80644  
80645  
80646  
80647  
80648  
80649  
80650  
80651  
80652  
80653  
80654  
80655  
80656  
80657  
80658  
80659  
80660  
80661  
80662  
80663  
80664  
80665  
80666  
80667  
80668  
80669  
80670  
80671  
80672  
80673  
80674  
80675  
80676  
80677  
80678  
80679  
80680  
80681  
80682  
80683  
80684  
80685  
80686  
80687  
80688  
80689  
80690  
80691  
80692  
80693  
80694  
80695  
80696  
80697  
80698  
80699  
80700  
80701  
80702  
80703  
80704  
80705  
80706  
80707  
80708  
80709  
80710  
80711  
80712  
80713  
80714  
80715  
80716  
80717  
80718  
80719  
80720  
80721  
80722  
80723  
80724  
80725  
80726  
80727  
80728  
80729  
80730  
80731  
80732  
80733  
80734  
80735  
80736  
80737  
80738  
80739  
80740  
80741  
80742  
80743  
80744  
80745  
80746  
80747  
80748  
80749  
80750  
80751  
80752  
80753  
80754  
80755  
80756  
80757  
80758  
80759  
80760  
80761  
80762  
80763  
80764  
80765  
80766  
80767  
80768  
80769  
80770  
80771  
80772  
80773  
80774  
80775  
80776  
80777  
80778  
80779  
80780  
80781  
80782  
80783  
80784  
80785  
80786  
80787  
80788  
80789  
80790  
80791  
80792  
80793  
80794  
80795  
80796  
80797  
80798  
80799  
80800  
80801  
80802  
80803  
80804  
80805  
80806  
80807  
80808  
80809  
80810  
80811  
80812  
80813  
80814  
80815  
80816  
80817  
80818  
80819  
80820  
80821  
80822  
80823  
80824  
80825  
80826  
80827  
80828  
80829  
80830  
80831  
80832  
80833  
80834  
80835  
80836  
80837  
80838  
80839  
80840  
80841  
80842  
80843  
80844  
80845  
80846  
80847  
80848  
80849  
80850  
80851  
80852  
80853  
80854  
80855  
80856  
80857  
80858  
80859  
80860  
80861  
80862  
80863  
80864  
80865  
80866  
80867  
80868  
80869  
80870  
80871  
80872  
80873  
80874  
80875  
80876  
80877  
80878  
80879  
80880  
80881  
80882  
80883  
80884  
80885  
80886  
80887  
80888  
80889  
80890  
80891  
80892  
80893  
80894  
80895  
80896  
80897  
80898  
80899  
80900  
80901  
80902  
80903  
80904  
80905  
80906  
80907  
80908  
80909  
80910  
80911  
80912  
80913  
80914  
80915  
80916  
80917  
80918  
80919  
80920  
80921  
80922  
80923  
80924  
80925  
80926  
80927  
80928  
80929  
80930  
80931  
80932  
80933  
80934  
80935  
80936  
80937  
80938  
80939  
80940  
80941  
80942  
80943  
80944  
80945  
80946  
80947  
80948  
80949  
80950  
80951  
80952  
80953  
80954  
80955  
80956  
80957  
80958  
80959  
80960  
80961  
80962  
80963  
80964  
80965  
80966  
80967  
80968  
80969  
80970  
80971  
80972  
80973  
80974  
80975  
80976  
80977  
80978  
80979  
80980  
80981  
80982  
80983  
80984  
80985  
80986  
80987  
80988  
80989  
80990  
80991  
80992  
80993  
80994  
80995  
80996  
80997  
80998  
80999  
80100  
80101  
80102  
80103  
80104  
80105  
80106  
80107  
80108  
80109  
80110  
80111  
80112  
80113  
80114  
80115  
80116  
80117  
80118  
80119  
80120  
80121  
80122  
80123  
80124<br

1 O'MELVENY & MYERS LLP  
2 BY: RYAN SYNDER  
3 rsnyder@omm.com  
4 (VIA TELECONFERENCE AND STREAM)  
5 AMY LUCAS  
6 alucas@omm.com  
7 (VIA REALTIME STREAM)  
8 SETH BAGLIN  
9 sbaglin@omm.com  
10 (VIA REALTIME STREAM)  
11 1999 Avenue of the Stars, 8th Floor  
12 Los Angeles, California 90067  
13 (213) 430-6326  
14 and  
15 TUCKER ELLIS LLP  
16 BY: JEFFREY C. SINDELAR, JR.  
17 jeffrey.sindelar@tuckerellis.com  
18 (VIA TELECONFERENCE)  
19 950 Main Avenue, Suite 1100  
20 Cleveland, Ohio 44113-7213  
21 (216) 696-3697  
22 Counsel for Janssen and Johnson &  
23 Johnson  
24  
25 MORGAN, LEWIS & BOCKIUS LLP  
BY: MAUREEN K. BARBER  
valerie.toth@morganlewis.com  
(VIA TELECONFERENCE AND STREAM)  
One Oxford Centre, 32nd Floor  
Pittsburgh, Pennsylvania 15219-6401  
(412) 560-3300  
Counsel for Teva Pharmaceuticals  
USA, Inc., Cephalon, Inc., Watson  
Laboratories, Inc., Actavis LLC,  
Actavis Pharma, Inc., f/k/a Watson  
Pharma, Inc.

1 MARCUS & SHAPIRA LLP  
2 BY: JOSHUA A. KOBRIK  
kobrin@Marcus-Shapira.com  
(VIA TELECONFERENCE AND STREAM)  
3 301 Grant Street, 35th Floor  
Pittsburgh, Pennsylvania 15219-6401  
4 (412) 338-4690  
Counsel for HBC  
5  
6

7 FOX ROTHSCHILD LLP  
8 BY: ZACHARY MARTIN  
Zmartin@foxrothschild.com  
(VIA TELECONFERENCE)  
9 2700 Kelly Road, Suite 300  
Warrington, Pennsylvania 18976-3624  
(215) 345-7500  
10 Counsel for Prescription Supply, Inc.  
11

12 CAVITCH FAMILO & DURKIN, CO., L.P.A.  
13 BY: ERIC J. WEISS  
eweiss@cavitch.com  
(VIA TELECONFERENCE)  
14 1300 East 9th Street  
Cleveland, Ohio 44114  
15 (216) 621-7860  
Counsel for Discount Drug Mart  
16  
17

18 FLAHERTY SENSABAUGH BONASSO PLLC  
BY: JACK SMITH  
jsmith@flahertylegal.com  
(VIA TELECONFERENCE AND STREAM)  
200 Capitol Street  
20 Charleston, West Virginia 25338  
(304) 345-0200  
21 Counsel for Masters Pharmaceutical  
22  
23  
24  
25

1 FOLEY & LARDNER LLP  
2 BY: KATY E. KOSKI  
3 kkoski@foley.com  
4 (VIA REALTIME STREAM)  
5 111 Huntington Avenue, Suite 2500  
6 Boston, Massachusetts 02199-7610  
7 (617) 342-4000  
8 Counsel for Anda  
9  
10

11 BAILEY WYANT PLLC  
12 BY: JUSTIN TAYLOR  
13 jtaylor@baileywyant.com  
14 (VIA REALTIME STREAM)  
15 500 Virginia Street East, Suite 600  
16 Charleston, West Virginia 25301  
17 (304) 345-4222  
18 Counsel for West Virginia Board of  
19 Pharmacy  
20  
21

22 ALSO PRESENT:

23 SPECIAL MASTER DAVID R. COHEN  
24 david@specialmaster.law  
25 24400 Chagrin Boulevard, Suite 300  
Cleveland, Ohio 44122  
(216) 831-0001  
26  
27

28 Juan Wilson, Lanier Law Firm  
29 Georgia Macy, Lanier Law Firm  
30  
31

32 VIDEOGRAPHER:

33 DAN LAWLOR,  
34 Golkow Litigation Services  
35  
36

37 - - -  
38  
39  
40  
41

1	INDEX	2
3		PAGE
4	APPEARANCES.....	2
5	EXAMINATIONS	
6	BY MS. MCCLURE.....	17
7	BY MS. WICHT.....	191
8	BY MR. EPPICH.....	207
9	BY MR. STEPHENS.....	233
10		
11	EXHIBITS	
12	No.	Description
13	Mapes 1	May 3, 2019 letter from US Department of Justice to Michael Mapes
14	Mapes 2	Mike Mapes LinkedIn profile printout
15		
16	Mapes 3	Code of Federal Regulation 1301.74 printout from Westlaw
17	Mapes 4	US Department of Justice DEA July 23, 1998 letter to Chris Zimmerman, ABDCMDL00315783 - ABDCMDL00315794
18		
19	Mapes 5	US Department of Justice DEA July 23, 1998 letter to Bergen Brunswig, US-DEA-00025671
20		
21	Mapes 6	US Department of Justice DEA letter dated December 27, 2007 to registrant, US-DEA-00001771 - US-DEA-00001772
22		
23		
24		
25		

1	Mapes 7	Memorandum dated August 16, 2005, subject Internet Presentation with AmerisourceBergen on August 10 2005, US-DEA-00000147 - US-DEA-00000164	133
5	Mapes 8	Memorandum dated October 20, 2005, subject Internet Presentation with McKesson Corp. On September 1, 2005, MCKMDL00496859 - MCKMDL00496875	141
8	Mapes 9	Memorandum dated August 23, 2005, subject Meeting with Cardinal Health, Inc., Concerning Internet Pharmacies, US-DEA-00000352 - US-DEA-00000366	142
12	Mapes 10	E-mail(s), CAH_MDL_PRIORPROD_DEA07_ 00857912-R	145
14	Mapes 11	E-mail(s), CAH_MDL_PRIORPROD_DEA07_ 01106667-R	146
16	Mapes 12	Order to Show Cause and Immediate Suspension of Registration, ABDCMDL00269383 - ABDCMDL00269387	154
19	Mapes 13	Order of Special Dispensation and Agreement Between The Drug Enforcement Administration and AmerisourceBergen Drug Corporation, ABDCMDL00398334 - ABDCMDL00279857	156
23	Mapes 14	Settlement and Release Agreement, ABDCMDL00279854 - ABDCMDL00279865	158

1	Mapes 15	E-mail(s), ABDCMDL00316083 - ABDCMDL00316110	169
2			
3	Mapes 16	US Department of Justice DEA Diversion Control Division Pharmaceutical Industry Conference printout	179
4			
5			
6	Mapes 17	AmerisourceBergen Drug Enforcement Administration Pharmaceutical Industry Conference, Wholesale Distribution Diversion Control Program, September 11, 2017, US-DEA-00001777 - US-DEA-00001799	180
7			
8			
9			
10	Mapes 18	Summary of the DEA-HDMA Meeting on Suspicious Orders Meeting Date: Sept 7, 2007, HDS_MDL_00135664 - HDS_MDL_00135665	200
11			
12			
13	Mapes 19	Internet Pharmacies, Joseph Rannazzisi, US-DEA-00002413  (Exhibits attached to the deposition.)	246
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

3 My name is Dan Lawlor. I'm the  
4 videographer with Golkow Litigation  
5 Services.

6 Today's date is July 11, 2019,  
7 and the time is 9:41 a.m.

12 The deponent is Michael Mapes.

16 MR. LANIER: My name is Mark  
17 Lanier. I'm here on behalf of the  
18 plaintiffs.

19 I've got with me from my firm  
20 Bob Leone, Rachel Lanier, Georgia  
21 Macy, Juan Wilson in the room.

22 And then I know that there are  
23 other plaintiffs' attorneys present,  
24 but I'll let them identify themselves.

25 MS. FITZPATRICK: Laura

1 Fitzpatrick, Simmons Hanly Conroy.

2 MR. FARRELL: Paul Farrell,

3 Jr., co-lead for the plaintiffs.

4 MR. PIFKO: Mark Pifko, Baron &  
5 Budd, for plaintiffs.

6 MR. FULLER: Mike Fuller on  
7 behalf of plaintiffs.

8 MS. MCCLURE: And we'll just  
9 continue in the room and then we can  
10 do the phone.

11 This is Shannon McClure, Reed  
12 Smith, on behalf of AmerisourceBergen.

13 MS. PIERCE: Abby Pierce from  
14 Reed Smith on behalf of  
15 AmerisourceBergen.

16 MR. EPPICH: Chris Eppich of  
17 Covington & Burling on behalf of  
18 McKesson.

19 MS. MONAGHAN: Meghan Monaghan  
20 of Covington & Burling on behalf of  
21 McKesson.

22 MS. SWIFT: Kate Swift for  
23 Walgreens.

24 MS. WICHT: Jennifer Wicht from  
25 Williams & Connolly for Cardinal

1 Health.

2 MR. MASTERS: Brad Masters,  
3 Williams & Connolly, Cardinal Health.

4 MR. LAVELLE: John Lavelle from  
5 Morgan Lewis on behalf of Rite Aid of  
6 Maryland.

7 MR. STEPHENS: Neal Stephens  
8 from Jones Day for Walmart.

9 MR. SNAPP: Erik Snapp from  
10 Dechert on behalf of the Purdue  
11 defendants.

12 MS. VENTURA: Catie Ventura of  
13 Kirkland & Ellis on behalf of the  
14 Allergan defendants.

15 MS. LEVY: Jennifer Levy from  
16 Kirkland & Ellis on behalf of the  
17 Allergan defendants.

18 MR. DAVISON: William Davison  
19 of Ropes & Gray on behalf of the  
20 Mallinckrodt defendants.

21 MR. MONTMINY: Brandan  
22 Montminy, Locke Lord, on behalf of the  
23 Henry Schein defendants.

24 MR. HAHN: Bill Hahn, Barnes &  
25 Thornburg, on behalf of HD Smith.

1 MS. BACCHUS: Renée Bacchus, US  
2 Attorney's Office, Northern District  
3 of Ohio, on behalf of the Department  
4 of Justice and DEA.

5 MS. SPEARS: Mariama Spears on  
6 behalf of the DEA.

7 MR. BENNETT: James Bennett  
8 from the US Attorney's Office in the  
9 Northern District of Ohio on behalf of  
10 the Department of Justice and DEA.

11 SPECIAL MASTER COHEN: David  
12 Cohen, special master.

13 VIDEOGRAPHER: And counsel on  
14 the phone, please identify yourselves.

15 MR. SHKOLNIK: Hunter Shkolnik,  
16 plaintiffs.

17 MR. BEISELL: Patrick Beisell  
18 for Walmart.

19 COURT REPORTER: I'm sorry, one  
20 at a time, please.

21 MS. MCCLURE: Zach?

22 MR. MARTIN: This is Zach  
23 Martin, Prescription Supply.

24 MR. SMITH: Jack Smith,  
25 Flaherty Sensabaugh Bonasso, for

1 Masters Pharmaceutical.

2 MR. KOBRIN: Josh Kobrin for HB  
3 Service Company.

4 MR. SNYDER: Ryan Snyder from  
5 O'Melveny & Myers on behalf of Johnson  
6 & Johnson and the Janssen defendants.

7 MR. SINDELAR: Jeffrey Sindelar  
8 from Tucker Ellis on behalf of Johnson  
9 & Johnson and Janssen.

10 MS. BARBER: Maureen Barber  
11 from Morgan Lewis for the Teva  
12 defendants.

13 MR. RUIZ: Anthony Ruiz from  
14 Zuckerman Spaeder for CVS.

15 MR. WEISS: Eric Weiss with  
16 Cavitch, Familo & Durkin on behalf of  
17 Discount Drug Mart.

18 VIDEOGRAPHER: All right. The  
19 court reporter today is Carrie  
20 Campbell and will now swear in the  
21 witness.

22 EXAMINATION

23 QUESTIONS BY MS. MCCLURE:

24 Q. Good morning, Mr. Mapes.

25 A. Good morning.

1 Q. That was a lengthy introduction  
2 to a big room with a lot of people here.

3 So I am Shannon McClure. I'm  
4 from the law firm of Reed Smith. I represent  
5 AmerisourceBergen Drug Corporation.

6 Thank you for coming here today  
7 and tomorrow. We appreciate your appearance  
8 here today.

9 We're just going to go through  
10 some deposition ground rules so that you are  
11 oriented to what we're going to be doing here  
12 today.

13 Just to explain the timing to  
14 you, which your counsel may have explained,  
15 the defendants have been afforded eight hours  
16 to question -- to question you, and the  
17 plaintiffs have been afforded five hours.

18 Defendants and plaintiffs may  
19 each elect to reserve some of their time to  
20 go after, so the defendants may go and then  
21 the plaintiffs and then a reservation of  
22 time.

23 Do you understand that today?

24 A. Yes, I do.

25 Q. And so your deposition will

1 begin today and will continue and conclude  
2 tomorrow.

3 This is a question and answer  
4 format, so I'll be doing the questions for  
5 the first part, and then there will be other  
6 defendants who will take over questioning on  
7 behalf of the defense, and then the  
8 plaintiffs will as well.

9 If there's ever a time that I  
10 ask you a question that you don't understand,  
11 I would like you to please ask me to rephrase  
12 the question and tell me that you don't  
13 understand that.

14 Do you understand that  
15 instruction?

16 A. Yes, I do.

17 Q. And similarly, if I insert  
18 facts or assumptions into a question that are  
19 inaccurate, then what I would like you to do  
20 is to correct those.

21 Can we agree on that?

22 A. Yes.

23 Q. And similarly, when other  
24 counsel question you in the room from either  
25 side, will you agree that to the extent that

1       there are factual inaccuracies or predicates  
2       that are inserted into a question that you  
3       don't agree with, you will not only respond  
4       to the question but you would correct those  
5       factual inaccuracies?

6           A.        Okay.

7           Q.        And if you answer my question,  
8       then I'm going to assume that you understood  
9       the question as I asked it.

10              Is that fair?

11           A.        Yes, it is.

12           Q.        And today your answers must be  
13       verbal. We do have a videocamera set up, but  
14       nevertheless, in order for Carrie, the court  
15       reporter, to take down what's been said in  
16       the room, I do need you to -- instead of  
17       nodding or shaking your head, I do need you  
18       to provide verbal answers.

19              Can you agree to do that today?

20           A.        Yes.

21           Q.        It can be easy in the course of  
22       normal conversation to nod or shake your  
23       head, but she can't get that down.

24           A.        Right.

25           Q.        Similarly, often in human

1 conversation we know where the other person  
2 is going or we start to finish the question  
3 that they're asking or answer it before the  
4 question has been completed. That makes it  
5 difficult later when we need to go back and  
6 look at the transcript as to what was said.

7 So what I would ask is that you  
8 allow me to finish my questions, and then,  
9 similarly, I will allow you to completely  
10 finish your answers before I ask another  
11 question.

12 Is that fair?

13 A. Yes.

14 Q. And if I do inadvertently  
15 interrupt you -- and I assure you it is  
16 inadvertent, I don't mean to -- then please  
17 just let me know that you're not finished  
18 answering, and I will of course stop and let  
19 you finish your answer.

20 Is that fair?

21 A. Okay.

22 Q. Okay. There may be objections  
23 from time to time interposed by any of the  
24 counsel in the room, including Mr. Bennett.  
25 For the most part, when objections are

1       interposed, you are still required to answer  
2       the question after an objection, say, to  
3       form.

4                                  Do you understand that?

5           A.           Yes.

6           Q.           There may be occasions where  
7       you may be instructed not to answer the  
8       question, and in that instance then you would  
9       have to determine whether you would follow  
10      the instructions of counsel and not answer  
11      the question, and there may be discussions  
12      among counsel about those instructions.

13                                  But for the most part, an  
14       objection is simply for the record and then  
15       you would be required to answer the question.

16                                  Do you understand that?

17           A.           Yes.

18           Q.           And you and I have never met  
19       before. I introduced myself when I took the  
20       government up to the breakout room; is that  
21       correct?

22           A.           That's correct.

23           Q.           And we've never written or  
24       exchanged any letters or e-mails?

25           A.           That's correct.

1 Q. And we've never spoken on the  
2 phone?

3 A. Not that I'm aware of.

4 Q. Or had any communication,  
5 right?

6 A. Yep.

7 Q. Okay. And this is a question  
8 that often comes up in depositions and might  
9 seem strange to you, but it's a standard  
10 question that we always ask witnesses.

11 Are you on any medications  
12 today that would affect your ability to  
13 recall information or testify truthfully here  
14 today?

15 A. No.

16 Q. Okay. And you understand that  
17 DOJ and DEA have authorized you to testify  
18 here today on behalf -- regarding certain  
19 topics about your work at DEA, right?

20 A. Yes.

21 (Mapes Exhibit 1 marked for  
22 identification.)

23 QUESTIONS BY MS. MCCLURE:

24 Q. I'm going to hand you a  
25 document that has been marked Mapes 1. And

1 if you could take a look at that document and  
2 let me know when you've had an opportunity to  
3 review it.

4 A. Okay. I've reviewed it.

5 Q. Now, given that this document  
6 is addressed to you, is it fair for me to  
7 assume that you have, in fact, seen this  
8 document before?

9 A. I have.

10 Q. This is not the first time  
11 you're seeing it?

12 A. That's correct.

13 Q. And to the best of your  
14 recollection, did you receive it sometime  
15 shortly after May 3, 2019, which is the date  
16 on page 1?

17 A. Yes.

18 Q. Okay. The letter references a,  
19 quote, "previous denial of authorization" in  
20 the first sentence.

21 Do you see that?

22 A. Yes.

23 Q. Had you previously received a  
24 communication from DEA or DOJ that there had  
25 been a request for your deposition received

1       that had been denied?

2           A.       Yes, I had.

3           Q.       Okay. Do you recall when you  
4 received that communication?

5           A.       I don't really remember exactly  
6 when it was.

7           Q.       And you may not remember  
8 exactly when it was. That's fair.

9                   Today I'm asking you, right  
10 now, about something that was several months  
11 ago. In this deposition I'll be asking you  
12 about things that may be several years ago or  
13 even many years ago.

14                  What I would like is for you to  
15 tell me in each of those instances where I'm  
16 asking you about a time period and you don't  
17 exactly remember, that's totally fair. What  
18 I would like you to do is tell me if you  
19 think -- if you can approximate when it was.  
20 Was it a couple of months before this, was it  
21 a year before this, if you can recall.

22                  A.       Probably three or four months  
23 before this.

24                  Q.       And I have not seen that  
25 communication. Is it fair to say that it

1       would have been a shorter communication than  
2       this one in the fact that you were not, in  
3       fact, authorized and thus there were no  
4       topics listed, or am I incorrect about that?

5           A.       Yes, it was shorter.

6           Q.       And in advance of today's  
7       deposition, did you review the topics on  
8       which you were authorized to provide  
9       testimony?

10          A.       I did.

11          Q.       And that is Topics 1 through 8,  
12       which are listed on pages 1 and 2, correct?

13          A.       Yes.

14          Q.       And then with regard to those  
15       areas of testimony, there is a second list  
16       which comprises A through M and lists out the  
17       subsets of information that you would not be  
18       permitted to testify about those topics.

19                   Is that a fair reading of this  
20       letter?

21          A.       Yes.

22          Q.       And so things that are  
23       privileged information are things that you  
24       would not be permitted to testify about  
25       within those first eight topics on pages 1 to

1 2, correct?

2 A. Yes.

3 Q. Okay. You can set that  
4 document aside for now.

5 Have you been contacted by any  
6 party to act as an expert in this matter?

7 A. Yes, I have.

8 Q. And has that been in a  
9 testifying expert capacity or in a consulting  
10 expert capacity?

11 A. Consulting.

12 Q. Okay. And who is that entity  
13 who has retained you?

14 A. The only one that's retained me  
15 is Williams Connolly.

16 Q. And have you met with attorneys  
17 from Williams & Connolly?

18 A. Yes.

19 Q. And you are aware that they  
20 represent Cardinal Health, correct?

21 A. That's correct.

22 Q. Okay. With whom did you meet?

23 A. I've forgotten the names.  
24 Jennifer and a couple other attorneys.

25 Q. And was that a single meeting?

1 A. Yes.

2 Q. How long was that meeting?

3 A. Six or seven hours.

4 Q. Do you recall approximately  
5 when that meeting was?

6 A. It was the Monday after Easter,  
7 whatever that day was.

8 Q. I don't know it either, but  
9 thank you for -- that's helpful.

10 Did they provide any documents  
11 for you to review, if you recall?

12 A. No, I don't recall reviewing  
13 documents.

14 Q. Have you seen any of the  
15 plaintiffs' expert reports in this case?

16 A. No.

17 Q. Did you review Cardinal's DEA  
18 expert report authored by Brian Reise?

19 A. No.

20 Q. Since the time that you were  
21 authorized by DEA on May 3, 2019, to testify  
22 as a fact witness in this case, have you  
23 spoken with anyone at Williams & Connolly or  
24 anyone representing Cardinal Health about any  
25 work for them?

1 A. No.

2 Q. Have you done any expert work  
3 in this case since you were authorized to  
4 testify pursuant to Exhibit 1, which is the  
5 May 3rd letter?

6 A. No.

7 Q. Did you meet with anyone to  
8 prepare for your deposition today?

9 A. Yes, I did.

10 Q. Okay. And who did you meet  
11 with?

12 A. The three attorneys here.

13 Q. And by "the three attorneys  
14 here," you're talking about the three  
15 attorneys to your left --

16 A. Yes.

17 Q. -- which is Mr. Bennett,  
18 Ms. Spears and Ms. Bacchus?

19 A. Yes.

20 Q. Was there anyone else in those  
21 meetings?

22 A. No.

23 Q. Were those meetings conducted  
24 as a conference call?

25 Was there anyone on a phone?

1 A. No.

2 Q. Did you meet one time or more  
3 than one time with those three attorneys?

4 MR. BENNETT: Objection. Form.

5 Are you talking about for this  
6 deposition?

7 MS. MCCLURE: Let me rephrase.

8 QUESTIONS BY MS. MCCLURE:

9 Q. The three attorneys to your  
10 left that you identified, have you met with  
11 them for multiple reasons, in other words,  
12 for this deposition and for other reasons?

13 A. Yes, I met with them twice.

14 Q. Okay. What was the nature  
15 of -- I assume one of the meetings, at least,  
16 was to prepare for this deposition; is that  
17 correct?

18 A. It is.

19 Q. And what was the nature of the  
20 other meeting?

21 A. To discuss my background with  
22 DEA, the things that I've done, what I've  
23 been involved in, that kind of thing.

24 Q. So is it fair to say that that  
25 was an informational meeting that you had

1 with these three attorneys?

2 A. Yes.

3 Q. And then the second meeting was  
4 specifically to prepare for the deposition?

5 A. Yes.

6 Q. How long did the first  
7 meeting -- and by "the first meeting," I'm  
8 referring to the informational meeting --  
9 last?

10 A. Three or four hours.

11 Q. Where was that meeting?

12 A. It was in the DEA office here  
13 in Colorado Springs, and some people were on  
14 the phone.

15 Q. Okay. So for the informational  
16 meeting, who was physically present with you  
17 in the room at the DEA office in Colorado  
18 Springs?

19 A. Mr. Bennett was, and I don't  
20 recall if anyone else was physically present  
21 in the room.

22 Q. To the best of your  
23 recollection, were Ms. Bacchus and Ms. Spears  
24 on the phone for that meeting, that  
25 informational meeting?

1           A.       I'm not sure who was on the  
2       phone. I don't remember.

3           Q.       So it's possible there are  
4       other attorneys, other than the three you've  
5       named here today, who were present on the  
6       phone for that first informational meeting?

7           A.       It's possible, yes.

8           Q.       But as of right now, you just  
9       don't remember who they were?

10          A.       That's correct.

11          Q.       For the second meeting to  
12      prepare for this deposition, how long was  
13      that meeting?

14          A.       Four hours.

15          Q.       Where was that meeting?

16          A.       At the DEA office here in  
17      Colorado Springs.

18          Q.       And when was that meeting?

19          A.       Yesterday.

20          Q.       When was the informational  
21      meeting that was the first meeting?

22          A.       Early this year. I don't know  
23      exactly when, but several months ago.

24          Q.       Do you recall whether that  
25      first meeting was before or after you

1 received that first communication that I  
2 don't have a copy of that did not authorize  
3 you to appear for a deposition?

4 A. I'm not certain.

5 Q. Have you met with anyone from  
6 plaintiffs' counsel in preparing for today's  
7 deposition or in the informational meeting  
8 that you discussed that was several months  
9 ago?

10 MR. BENNETT: Objection.

11 Compound.

12 QUESTIONS BY MS. MCCLURE:

13 Q. Let me rephrase.

14 Did you meet with anyone from  
15 plaintiffs' counsel today before -- in  
16 preparation for today's deposition?

17 A. No.

18 Q. Okay. And so some names of  
19 plaintiffs' attorneys would be Mark Lanier,  
20 Don Migliori, Linda Singer, Jayne Conroy,  
21 Ms. Finkelstein, Hunter Shkolnik, Pete  
22 Weinberger, Mike Fuller, Mark Pifko, Paul  
23 Farrell, none of those attorneys were  
24 attorneys that you met with in preparation  
25 for your deposition today?

1 MR. BENNETT: Objection. Form.

2 You can answer.

3 THE WITNESS: That's correct.

4 QUESTIONS BY MS. MCCLURE:

5 Q. During your meeting yesterday  
6 to prepare for this deposition today, was  
7 there anyone on the phone?

8 A. No.

9 Q. And to the best of your  
10 knowledge, that long list of plaintiffs'  
11 attorneys that I've provided you were not on  
12 the phone for your informational meeting, but  
13 you can't be certain because you don't recall  
14 exactly who was on the phone; is that fair?

15 A. I believe anybody that was on  
16 the phone was a government attorney, so they  
17 wouldn't have been the plaintiffs' attorneys.

18 Q. Great. Thank you.

19 And have you retained private  
20 counsel for this deposition here today?

21 A. No, I have not.

22 Q. So you didn't work with any  
23 private counsel in preparation for your  
24 testimony here today?

25 A. That's correct.

1 Q. And by "private counsel," I'm  
2 referring to nongovernmental attorneys.

3 A. Right.

4 Q. Okay. Separately from the  
5 meetings we've discussed, which is the  
6 informational meeting several months ago and  
7 then the preparation for your deposition here  
8 today, have you met with plaintiffs' counsel  
9 regarding this case generally?

10 A. I did meet with plaintiffs'  
11 counsel a couple of times in Washington, DC.

12 Q. And by "a couple of times,"  
13 does that mean two times?

14 A. Yes.

15 Q. And was that two different  
16 times or two consecutive days?

17 A. Two different times.

18 Q. When were those meetings,  
19 approximately?

20 A. Last late summer and fall.

21 Q. So summer and fall of 2018?

22 A. Yes.

23 Q. How long were those meetings?

24 A. Two or three hours each.

25 Q. Where were they?

1 A. In an office downtown in DC.

2 Q. Do you recall whose office?

3 A. No, I don't.

4 Q. And who attended those?

5 Well, let me ask first this  
6 question. We'll call those the first and  
7 second meetings in the spring and fall  
8 of 2018 -- summer and fall of 2018.

9 For the summer of 2018 meeting,  
10 who attended that meeting?

11 A. Joseph Rannazzisi, who was also  
12 with DEA, retired, myself, and there were  
13 five or six attorneys from various law firms.

14 Q. Do you recall their names?

15 A. No, I don't.

16 Q. Do you see any of those  
17 attorneys in the room here today?

18 A. No.

19 Q. How did that meeting come  
20 about, that summer of 2018 meeting?

21 A. I was contacted by Joseph  
22 Rannazzisi. He told me that he was working  
23 with this group and asked me to come to  
24 Washington to meet with the group.

25 Q. When you say he said "he was

1 working with this group," what group did he  
2 mean, to your understanding?

3 A. This group of attorneys that  
4 were plaintiffs' attorneys.

5 Q. And so you understood that  
6 these were plaintiffs' attorneys representing  
7 city, county governments in opioid  
8 litigation?

9 A. Representing -- excuse me.  
10 Representing states, Indian tribes, cities,  
11 counties.

12 Q. Okay. Any other type of  
13 entities you understood that this group of  
14 plaintiffs' attorneys represented?

15 A. No.

16 Q. And was Joseph Rannazzisi  
17 present for the entire first meeting in the  
18 spring -- in the summer or fall of 2018?

19 A. He was.

20 Q. Were you retained as an expert  
21 at the conclusion of either the first or the  
22 second meeting in 2018 with plaintiffs'  
23 counsel?

24 A. No, I was not.

25 Q. Tell me what you can remember

1 from those meetings.

2 A. Generally, discussions about  
3 DEA policies, suspicious order monitoring,  
4 that kind of issue.

5 Q. The second meeting in summer or  
6 fall of 2018, who was present?

7 A. Joseph Rannazzisi was present  
8 and some of the same group of attorneys.

9 Q. But do you know whether it was  
10 the exact same group or it might have shifted  
11 to some degree?

12 A. It could have been shifted  
13 somewhat, but mostly the same.

14 Q. Do you see any attorneys in  
15 this room who attended that second meeting?

16 A. No.

17 Q. And why did the second meeting  
18 happen, to your knowledge?

19 A. They had more questions about  
20 suspicious order monitoring, quotas, ARCOS,  
21 those kind of issues.

22 Q. Other than DEA policies,  
23 quotas, ARCOS and suspicious order  
24 monitoring, can you recall any other topic  
25 from either of those two meetings that you

1 discussed with plaintiffs' counsel?

2 A. No.

3 Q. Do you remember what you  
4 discussed about quotas?

5 A. Very little, because my  
6 knowledge of quotas is very limited.

7 Q. Of that very little that you  
8 discussed about quotas, do you remember what  
9 specifically you discussed about quotas given  
10 your limited knowledge?

11 A. That there are quotas set for  
12 manufacturing of certain drugs, and the DEA  
13 sets those quotas, and different  
14 manufacturers have their share of the quota  
15 for different drugs. That's about it.

16 Q. Do you recall what you  
17 discussed in those two meetings about ARCOS?

18 A. Just generally what ARCOS is  
19 and where the information comes from and how  
20 it's used.

21 Q. And what is ARCOS?

22 A. ARCOS is a system that collects  
23 information from all sales of Schedule II  
24 drugs and Schedule III narcotic drugs.

25 Q. So it's transactional data?

1 A. Yes.

2 Q. Provided by whom?

3 A. By the registrants that are  
4 selling the drugs.

5 Q. And what did you tell  
6 plaintiffs' counsel about how ARCOS is used?

7 A. It's used to see which drugs  
8 are going to which pharmacies from which  
9 wholesalers. It's used to look at pharmacies  
10 to see if they're buying from several  
11 wholesalers, that kind of thing.

12 Q. ARCOS is accessible to DEA,  
13 correct?

14 A. Yes.

15 Q. ARCOS is not accessible to  
16 registrants in the industry, correct?

17 A. I don't know if it is today.  
18 It was not when I was there.

19 Q. So registrants would generally  
20 have access to their own transactional data,  
21 correct?

22 A. Yes.

23 Q. But not the transactional data  
24 of, say, a competitor of theirs who is also a  
25 wholesaler?

1 A. That's correct.

2 Q. And what did you tell the  
3 plaintiffs' attorneys regarding suspicious  
4 order monitoring, that topic?

5 A. We discussed the suspicious  
6 order monitoring, what the regulation says  
7 about suspicious order monitoring, and what  
8 the current practice is within DEA.

9 Q. And by "current practice," you  
10 mean today?

11 A. Yes.

12 Q. Now, you left DEA. We'll go  
13 through your background in more detail, but  
14 you left DEA in 2007, correct?

15 A. That's correct.

16 Q. But you're aware of the current  
17 practice today with respect to DEA because  
18 you are still in the industry and are aware  
19 of DEA practices; is that fair?

20 A. That specific practice, yes,  
21 because I've talked to DEA folks about it.

22 Q. When you say you've "talked to  
23 DEA folks" about that specific practice, are  
24 you saying you've talked to DEA folks since  
25 you left DEA in 2007 regarding DEA's approach

1 to suspicious order monitoring?

2 A. Yes.

3 Q. With whom have you had  
4 discussions at DEA since you left it in 2007  
5 about DEA's approach to suspicious order  
6 monitoring?

7 A. More than one person. The one  
8 I remember is Cathy Gallagher, who was the  
9 chief of the liaison and policy section.

10 Q. And have you talked with  
11 Ms. Gallagher once or more than once?

12 A. More than once.

13 Q. How regularly have you  
14 communicated with Ms. Gallagher since 2007  
15 regarding DEA's approach to suspicious order  
16 monitoring?

17 A. Not regularly. It's been two  
18 or three times, possibly.

19 Q. And that's two or three times  
20 since 2007?

21 A. Yes.

22 Q. Have you spoken with anyone  
23 else at DEA regarding DEA's approach to  
24 suspicious order monitoring since the time  
25 you left DEA?

1                   A.           No.

2                   Q.           So a minute ago when I asked  
3                   you with whom had you spoken with DEA since  
4                   you left in 2007 about DEA's approach to  
5                   suspicious order monitoring, I thought you  
6                   indicated that it was more than one person,  
7                   but the one that you remembered was Cathy  
8                   Gallagher.

9                                   Is there more than one person  
10                          that you've spoken with since 2007?

11                   A.           I don't recall talking to  
12                   anyone else about that specific subject.

13                   Q.           Have you talked with DEA  
14                   representatives since you left in 2007 about  
15                   other nonsuspicious order monitoring topics?

16                   A.           About DEA policy specifically  
17                   or about other --

18                   Q.           I'm not asking about your  
19                   personal connections with people you may have  
20                   worked with that you keep in touch with about  
21                   non-DEA matters.

22                                   So my question is limited to  
23                   DEA-related matters, whether it's suspicious  
24                   order monitoring or policies or something  
25                   else, enforcement approach. You tell me what

1 the topics would be.

2 MR. BENNETT: Objection. Form.

3 Go ahead.

4 THE WITNESS: I have spoken  
5 with other people in DEA about issues  
6 related to pharmacies that I was  
7 working for and DEA's approach with  
8 those pharmacies.

9 QUESTIONS BY MS. MCCLURE:

10 Q. So about specific registrants?

11 A. Yes.

12 Q. That you were either employed  
13 by or consulting for?

14 A. Yes, employed by.

15 Q. And was the nature of those  
16 conversations asking for guidance from DEA,  
17 or were you providing information to DEA?

18 A. Providing information about  
19 what the pharmacy was doing, how they were  
20 handling controlled substances.

21 Q. How about the topic of DEA  
22 policies?

23 We're going back to the  
24 meetings that you had in summer and fall  
25 of 2018 with plaintiffs' counsel.

3                   A.         Are we talking a particular  
4 policy, like suspicious orders, or...

5 Q. I don't know.

6 Did you discuss more than one  
7 policy, DEA policy, with plaintiffs' counsel?

8           A.       I don't think so because I  
9       hadn't been there for a number of years, so I  
10      wasn't sure what DEA's current policies are  
11      on most topics.

12 Q. But you recall discussing  
13 suspicious order monitoring, DEA policies,  
14 with plaintiffs, correct?

15 A. Yes.

16 Q. And were those DEA policies  
17 that you discussed with plaintiffs in the  
18 summer or fall of 2018 the policies that had  
19 been in effect when you were at DEA? So  
20 prior to December of 2007.

21                   A.         We discussed those policies as  
22 part of the Distributor Initiative meetings  
23 that we had with wholesalers.

24 Q. Were you paid for your  
25 attendance at these two meetings?

1 A. Yes.

2 Q. How much were you paid?

3 A. \$300 an hour.

4 Q. And each of the meetings was  
5 two to three hours, meaning that the most it  
6 was was six hours, is that correct, in total?

7 A. It may have been an hour or two  
8 more. I don't recall for sure.

9 Q. Okay. Were you asked to serve  
10 as an expert at the conclusion of or during  
11 these meetings?

12 A. We discussed it, but it didn't  
13 go any further.

14 Q. Why?

15 A. You would have to ask them.

16 Q. Do you have any understanding  
17 as to why you were not retained as an expert?

18 A. No.

19 Q. Were those meetings  
20 informational meetings in which you were  
21 providing information to the plaintiffs, or  
22 were the plaintiffs also providing you  
23 information about their lawsuits?

24 A. It was mostly me providing  
25 information to them in response to their

1       questions.

2           Q.        Do you recall any information  
3       that they provided to you?

4           A.        No.

5                   (Mapes Exhibit 2 marked for  
6       identification.)

7   QUESTIONS BY MS. MCCLURE:

8           Q.        I'm going to hand you a  
9       document that's been marked as Mapes  
10      Exhibit 2, which is a LinkedIn printout of  
11      your bio.

12                  If you could take a moment and  
13       review that, and let me know when you've had  
14       a chance to do so.

15           A.        I have.

16           Q.        And so according to this  
17       profile, you worked for DEA for a little more  
18       than 30 years in total, correct?

19           A.        That's correct.

20           Q.        From 1977 to 2007?

21           A.        Yes.

22           Q.        And you held a number of  
23       positions over the course of your tenure at  
24       DEA, correct?

25           A.        Correct.

1                   Q.         Were all of those positions in  
2                   the diversion side of DEA?

3                   MR. BENNETT: Objection. Form.

4                   THE WITNESS: They were all  
5                   related to the diversion program, yes.

6                   QUESTIONS BY MS. MCCLURE:

7                   Q.         And so some of your positions  
8                   may not have been actually having you housed  
9                   in diversion, but the subject matter about  
10                  which you were employed for DEA related to  
11                  diversion in all of your 30-year -- in all of  
12                  your positions over 30 years?

13                  A.         That's correct.

14                  Q.         You started out as a diversion  
15                  investigator in Detroit and Cleveland?

16                  A.         Yes.

17                  Q.         Detroit was approximately  
18                  '80 -- sorry, '77 to '83 or '84?

19                  A.         Yes.

20                  Q.         And then Cleveland was '83 or  
21                  '84 to '85 or '86?

22                  A.         Yes.

23                  Q.         I note that you graduated from  
24                  college, which was Ferris State University,  
25                  in 1974; is that correct?

1           A.       It is.

2           Q.       And then what -- did you have  
3       any jobs or positions between 1974 and 1977?

4           A.       I did.

5           Q.       What were those?

6           A.       I was a deputy sheriff for  
7       about two and a half years in Michigan, and  
8       after that I worked for the -- as a civilian  
9       for the Department of the Army as a budget  
10      analyst for about a year.

11          Q.       And then you applied for a  
12      position at DEA?

13          A.       Yes.

14          Q.       What is a diversion  
15      investigator?

16          A.       Someone that investigates  
17      registrants or potential registrants that  
18      handle controlled substances, investigates  
19      the movement of controlled substances and  
20      diversion of controlled substances from  
21      legitimate channels.

22          Q.       In the course of your duties as  
23      a diversion investigator, did you conduct  
24      audits or cyclic investigations of  
25      registrants?

1 A. I did.

2 Q. Including wholesalers?

3 A. Yes.

4 Q. In connection with those cyclic  
5 audits -- am I using the correct phrase?

6 A. Yes.

7 Q. Okay. In connection with those  
8 cyclic audits, would you review suspicious  
9 order monitoring systems?

10 A. Yes.

11 Q. Was that a standard part in  
12 your experience of a diversion investigator's  
13 role?

14 A. It was.

15 Q. And so it was a responsibility  
16 that diversion investigators needed to carry  
17 out with respect to registrants for the field  
18 office to which they were assigned?

19 A. That's correct.

20 Q. The results of those audits  
21 would be reported on a DEA 6 report?

22 A. They would.

23 Q. If a diversion investigator  
24 determines that a registrant was not  
25 complying with the regulations, would the

1 investigator tell the registrant what that  
2 registrant was doing wrong?

3 MR. BENNETT: Objection.

4 Incomplete hypothetical.

5 QUESTIONS BY MS. MCCLURE:

6 Q. You can answer.

7 A. Yes, they would.

8 Q. And that's in your experience  
9 at DEA?

10 A. Yes.

11 Q. As a diversion investigator?

12 A. Yes.

13 Q. And later as a group  
14 supervisor, you expected your diversion  
15 investigators to communicate with registrants  
16 about what they were doing wrong?

17 A. Yes.

18 Q. So that they could correct it?

19 A. That's right.

20 Q. Was it an expectation in your  
21 experience that a diversion investigator in  
22 such a circumstance would follow up to see if  
23 that issue had been corrected?

24 MR. BENNETT: Objection. Form.

25 THE WITNESS: It would be

1                   followed up, whether it was by that  
2                   diversion investigator or another one.

3                   QUESTIONS BY MS. MCCLURE:

4                   Q.         Okay. Audits can also be  
5                   conducted outside of the cyclic process if  
6                   there was a particular reason or something  
7                   came up that suggested that an audit might be  
8                   appropriate; is that accurate?

9                   A.         It is.

10                  Q.         What was your next position at  
11                  DEA after diversion investigator in  
12                  Cleveland?

13                  A.         I was a staff coordinator at  
14                  headquarters in Washington, DC.

15                  Q.         And was that for -- for how  
16                  long a period of time?

17                  A.         A little less than a year.

18                  Q.         What is the job of a staff  
19                  coordinator?

20                  A.         To review the reports from a  
21                  field office and the requests from the field  
22                  office for assistance with investigative  
23                  matters.

24                  Q.         So do I have it correct that a  
25                  field office, one of DEA's field offices, may

1 reach out to headquarters because they had  
2 something that they required more resources  
3 for than they had available to them?

4 A. Either resources in terms of  
5 funding or in terms of more personnel or  
6 whatever they needed.

7 Q. Did headquarters have access to  
8 some information that a field office would  
9 not have had access to?

10 A. Yes.

11 Q. Let me rephrase that question.  
12 Would a diversion investigator  
13 reach out to a staff coordinator such as  
14 yourself to get some information to support  
15 an investigation?

16 MR. BENNETT: Objection. Form.

17 THE WITNESS: They may.

18 QUESTIONS BY MS. MCCLURE:

19 Q. You later became an instructor  
20 at Quantico?

21 A. Yes.

22 Q. Quantico is a location in  
23 Virginia where DEA diversion investigators  
24 train; is that right?

25 A. It is.

1 Q. And what did you -- did you, in  
2 fact, instruct those potential diversion  
3 investigators in the course of that position?

4 A. I did.

5 Q. What did you instruct them  
6 about?

7 A. Various topics related to  
8 diversion, whether it's drug field testing,  
9 auditing, those kind of things.

10 I didn't do the majority of the  
11 teaching for diversion investigators. We had  
12 folks from the field come in and do that.

13 Q. But you did some instruction  
14 about diversion?

15 A. Yes.

16 Q. Your next position in the  
17 1990s, if I have this timing correct, was as  
18 a group supervisor in the Denver field  
19 office?

20 A. That's correct.

21 Q. What were the years of that  
22 position?

23 A. Roughly '92 to '97.

24 Q. Were you also a regional  
25 manager of diversion control --

1 A. Yes.

2 Q. -- in that same time period?

3 A. Yes. The diversion program  
4 manager, yes.

5 Q. Is that a different position,  
6 or is that part of the group supervisor  
7 title?

8 A. That's a different position.

9 Q. How did the duties of a  
10 diversion program manager differ from those  
11 of a group supervisor?

12 A. The supervisor supervises a  
13 group of investigators, in this case in the  
14 Denver office, and the manager deals with the  
15 supervisor in Denver, the supervisor in Salt  
16 Lake City, the supervisor in Albuquerque, in  
17 the entire field division.

18 Q. Okay. So the regional man --  
19 I'm sorry. The diversion program manager is  
20 a higher-up position than the group  
21 supervisor?

22 A. Yes.

23 Q. And what were the years that  
24 you held the position of diversion program  
25 manager?

1                   A.         Roughly '97, '98-ish.  
2                   Q.         And in each of these two  
3                   positions, the group supervisor position and  
4                   the diversion program manager position, you  
5                   oversaw diversion investigators, or the group  
6                   supervisors who are overseeing those  
7                   diversion investigators, in connection with  
8                   their oversight and investigation and  
9                   enforcement of the Controlled Substances Act;  
10                  is that correct?

11                  A.         Yes.

12                  Q.         What was your next position  
13                  after diversion program manager?

14                  A.         Liaison with the United Nations  
15                  International Archives Control Board in  
16                  Vienna, Austria.

17                  Q.         Did you actually live in  
18                  Vienna?

19                  A.         Yes.

20                  Q.         And that was for approximately  
21                  two years?

22                  A.         Yes.

23                  Q.         And what were your  
24                  responsibilities in that position?

25                  A.         Working mostly with the

1 precursor control group of the UN to deal  
2 with issues between countries about shipments  
3 of precursor chemicals for controlled  
4 substance manufacture.

5 Q. And your next position was  
6 deputy chief of the liaison and policy  
7 section?

8 A. It was.

9 Q. And is that a promotion from  
10 what your prior position had been?

11 A. No, it was a lateral.

12 Q. Was it a promotion from the  
13 diversion program manager role?

14 A. No, it was lateral.

15 Q. That's all lateral.

16 And what were your  
17 responsibilities as deputy chief of liaison  
18 and policy?

19 A. Working with the staff  
20 coordinators and with the section chief to  
21 work with the industry to interpret policies  
22 and procedures, and work with those who were  
23 writing Federal Register announcements about  
24 various issues.

25 Q. When you say "work with those

1 who were writing Federal Register  
2 announcements," what does that mean?

3 A. For issues related to the  
4 Office of Diversion, there were a couple of  
5 people in liaison and policy who wrote the  
6 Federal Register announcements about  
7 policies, and so we'd review those and  
8 discuss those and that kind of thing.

9 Q. So did you have oversight  
10 responsibility over the individuals who were  
11 writing announcements about DEA policies in  
12 the Federal Register?

13 A. They worked for a unit chief,  
14 and the unit chief reported to the section  
15 chief that I worked with, but I didn't have  
16 oversight.

17 Q. What was your next position  
18 after deputy chief of liaison and policy?

19 A. I was chief of the planning and  
20 resources section at headquarters.

21 Q. How long did you have that  
22 role?

23 A. About two years.

24 Q. So what years are we in at this  
25 point for the planning and resources role?

1 A. 2003 and '4, possibly.

2 Q. And what were the  
3 responsibilities of that position?

4 A. Dealing with personnel issues,  
5 hiring, budget issues, equipment, those kind  
6 of things.

7 Q. And your next position after  
8 the planning and resources one?

9 A. Was chief of the E-Commerce  
10 section.

11 Q. So did that begin in  
12 approximately 2004?

13 A. Yes.

14 Q. And go through when?

15 A. Middle of 2005.

16 Q. What is chief of a section at  
17 DEA? What does that mean?

18 A. It means that there are units  
19 within a section that have people that are  
20 performing various functions, and the section  
21 chief is the manager of the unit chiefs.

22 Q. So who were the unit chiefs  
23 that you were overseeing in the E-Commerce  
24 section?

25 MR. BENNETT: Objection to

1                   form. Time.

2                   QUESTIONS BY MS. MCCLURE:

3                   Q.         So he's identified the time  
4       period as -- am I correct that it's 2004 to  
5       2005 that you were the chief of E-Commerce?

6                   A.         Yes.

7                   Q.         How many unit chiefs did you  
8       have?

9                   A.         Three, I believe.

10                  Q.         And did they each have  
11      different roles?

12                  A.         Yes.

13                  Q.         What were those roles?

14                  A.         One was dealing with the  
15      programs known as CSOS and EPSC, computerized  
16      programs, one was detailing with the  
17      contractors that were working in the  
18      programs, and one was the targeting and  
19      analysis unit that was looking at data from  
20      available sources.

21                  Q.         Did the data from available  
22      sources that the targeting and analysis unit  
23      look at include ARCOS?

24                  A.         Yes.

25                  Q.         What other sources?

1 MR. BENNETT: Objection.

2 Scope.

3 You're not authorized to  
4 disclose any confidential law  
5 enforcement databases or confidential  
6 law enforcement investigative tools.

7 To the extent that you can  
8 answer without disclosing such  
9 confidential databases or  
10 investigative tools, you may answer  
11 the question.

12 THE WITNESS: There's none  
13 other -- other tools that are public  
14 tools.

15 QUESTIONS BY MS. MCCLURE:

16 Q. So the only public tool that  
17 you are authorized here to discuss today that  
18 targeting and analysis work with is ARCos,  
19 correct?

20 A. Correct.

21 Q. In that role as chief of  
22 E-Commerce, did you meet with registrants?

23 A. I had meetings with  
24 representative of different registrants to  
25 talk about different issues.

1 Q. What do you mean by  
2 "representatives"?

3 A. It might be someone from their  
4 IT department or someone from their legal  
5 department or someone from their compliance  
6 department or something like that.

7 Q. You then served as the chief of  
8 the regulatory unit?

9 A. That's correct.

10 Q. What is the regulatory unit?

11 A. It was a unit that looked at --  
12 well, it was a section that looked at the  
13 regulatory investigations that were done  
14 within the Office of Diversion Control by the  
15 field offices. Also issued import/export  
16 declarations and permits for controlled  
17 substances that were coming into or leaving  
18 the country.

19 Q. When you say that that section  
20 looked at the regulatory investigations that  
21 were done within the Office of Diversion  
22 Control, what does that mean, to look at  
23 them?

24 A. It means all the reports that  
25 are written by the field offices come to the

1 staff coordinators in headquarters that  
2 review those to see if they're following the  
3 appropriate policies and procedures and see  
4 if there are issues that are consistent  
5 issues across the country with several  
6 registrants or not.

7 Q. What would those reports be  
8 called that you reviewed?

9 A. They would be DEA 6s that were  
10 reports of investigation of registrants of  
11 any kind.

12 Q. You left DEA in 2007?

13 A. That's correct.

14 Q. At that time were you the chief  
15 of the regulatory unit?

16 A. The regulatory section, yes.

17 Q. I'm sorry, the regulatory  
18 section.

19 And why did you leave DEA?

20 A. I retired.

21 Q. And after that you became a  
22 consultant, correct?

23 A. Yes.

24 Q. Is that what iSAW means,  
25 I-S-A-W? Is that your company?

1 A. No, it's not.

2 Q. Okay. What is iSAW?

3 A. It's a company that's  
4 developing technology to identify suspects  
5 and witnesses to criminal activity.

6 Q. Is iSAW related to diversion --

7 A. No.

8 Q. -- or the pharmaceutical  
9 industry?

10 A. No.

11 Q. After you left DEA in 2007,  
12 were you also a consultant in the industry  
13 for diversion-related questions or issues?

14 A. Yes, I was.

15 Q. And did that -- did you form a  
16 consulting company for that?

17 A. No, that was mostly an  
18 independent consultant.

19 Q. But there's not a company name  
20 or something like that that I would -- that  
21 you would be able to tell me for the purpose  
22 of your post-DEA consulting to industry  
23 regarding diversion?

24 A. A pharmacy that I worked for  
25 created a company to do consulting. That was

1       a Controlled Substance Compliance Group, but  
2       that was owned by that pharmacy, and I worked  
3       with them and did consulting.

4           Q.       When did you begin working for  
5       that pharmacy?

6           A.       About 2009.

7           Q.       And what is that pharmacy  
8       called at that time in 2009?

9           A.       At the time that pharmacy was  
10      Assured Pharmacy.

11          Q.       And so Assured created a  
12      subsidiary company called the Controlled  
13      Substance Compliance Group.

14           Do I have that correct?

15          A.       Yes.

16          Q.       And you began working for the  
17      Controlled Substance Compliance Group in  
18      2009?

19          A.       No, that wasn't created until  
20      probably 2013-ish.

21          Q.       And so initially you worked  
22      directly for Assured?

23          A.       Yes.

24          Q.       What kinds of activities did  
25      you do for Assured?

1           A.       I was the chief compliance  
2       officer for the group of pharmacies and wrote  
3       policies and procedures, reviewed the  
4       pharmacies to be sure they're following the  
5       policies and procedures.

6           Q.       Are you still working for  
7       Assured today?

8           A.       No.

9           Q.       When did you stop working for  
10      Assured?

11          A.       Assured was bought out by  
12       another group called Cordant Health Services,  
13       and so they became known as Cordant  
14       pharmacies, and I worked with them through  
15       the end of 2015.

16          Q.       So from 2009 through 2015, you  
17       were working for Assured or Cordant,  
18       depending on what the name was at the time?

19          A.       Right.

20          Q.       Did your job duties change over  
21       that 2009 to 2015 time period?

22          A.       No.

23          Q.       Going back to your independent  
24       consulting unrelated to Assured or Cordant,  
25       there's no company name that you had or that

1 you used for that kind of consulting,  
2 correct?

3 A. Correct.

4 Q. And who were your clients in  
5 the independent consulting business that you  
6 had after leaving DEA, to the best that you  
7 can recall?

8 A. AmerisourceBergen, HD Smith,  
9 Meijer Company, M-e-i-j-e-r, Henry Schein,  
10 Physicians Pharmaceutical Corporation.

11 There's others I just can't  
12 recall this second.

13 Q. Okay. During what period of  
14 time were you acting as an independent  
15 consultant after leaving DEA in 2007?

16 A. The --

17 Q. And I'm talking now  
18 specifically about the consulting relating to  
19 diversion.

20 A. From 2008 through 2015 or '16.

21 Q. So there's some overlap there  
22 between the independent consulting work that  
23 you were doing and your work for Assured and  
24 Cordant in terms of time, correct?

25 A. Yes. Assured was part time.

1 Q. Okay. Did Assured become full  
2 time at some point?

3 A. No.

4 Q. So for the entire 2009 to 2015  
5 time period with Assured and then Cordant,  
6 that was all part time?

7 A. That's correct.

8 Q. What was your first position  
9 that was physically located at DEA  
10 headquarters?

11 A. That was the staff coordinator.

12 Q. Okay.

13 MR. BENNETT: Do you need a  
14 break, or are you okay?

15 QUESTIONS BY MS. MCCLURE:

16 Q. And that was 2001 to 2003?

17 A. No.

18 Q. If I have it wrong, then tell  
19 me.

20 A. Yeah, that was -- that was  
21 earlier than that. That was right after  
22 Cleveland.

23 Q. Okay. Thank you.

24 So Cleveland ended in '85, '86,  
25 right?

1 A. Yes.

2 Q. Okay. Then you went back into  
3 the field, correct, at some point?

4 MR. BENNETT: Objection. Form.

5 QUESTIONS BY MS. MCCLURE:

6 Q. When you were working -- let me  
7 rephrase that.

8 During the time that you were a  
9 group supervisor, that was in Denver --

10 A. Correct.

11 Q. -- not at headquarters,  
12 correct?

13 A. Correct.

14 Q. And during the time that you  
15 were the diversion program manager, that was  
16 not physically located at headquarters,  
17 correct?

18 A. Correct.

19 Q. Okay. When was the next  
20 position that you had when you went to --  
21 when you were working at headquarters?

22 MR. BENNETT: Objection. Form.

23 THE WITNESS: When I went back  
24 to headquarters, it was the deputy  
25 chief of liaison and policy first.

1       QUESTIONS BY MS. MCCLURE:

2           Q.        Okay. Thank you.

3                   In 2005, who was the head of  
4       the Office of Diversion Control?

5           A.        I'm not certain. It could have  
6       been one of a couple of different people.

7           Q.        Was Bill Walker one of those  
8       couple of different people?

9           A.        Yes.

10          Q.        Who else could it have been?

11          A.        Joe Rannazzisi.

12          Q.        You just don't recall when the  
13       transition happened?

14          A.        Correct.

15          Q.        Did Joe Rannazzisi take over  
16       that role from Bill Walker?

17          A.        Yes.

18          Q.        Okay. No one in between,  
19       correct?

20          A.        Correct.

21          Q.        Did you work with Joe  
22       Rannazzisi in that time period?

23          A.        I did.

24          Q.        Did you report to him?

25          A.        I did.

1 Q. And this is in the role as  
2 chief of liaison and policy or chief of the  
3 E-Commerce section?

4 A. Either E-Commerce or the  
5 regulatory section. I'm not sure exactly  
6 when he came in.

7 Q. Right.

8 So he was not the head of the  
9 Office of Diversion when you were chief of  
10 liaison and policy?

11 A. No, that was Laura Nagel.

12 Q. But you don't recall whether  
13 you reported to him in your role as chief of  
14 E-Commerce or chief of regulatory section or  
15 both?

16 A. I did, as chief of regulatory  
17 section, report to Joe Rannazzisi, but I'm  
18 not sure in E-Commerce who it was.

19 Q. Now, you previously talked  
20 about your role in -- do I have it --  
21 planning and budget?

22 Do I have that title correct?  
23 Probably not.

24 A. It was planning and resources.

25 Q. Planning and resources.

1                   There's two different sides to  
2    DEA, correct?

3                   A.       Yes.

4                   MR. BENNETT: Objection. Form.  
5                   You can answer.

6    QUESTIONS BY MS. MCCLURE:

7                   Q.       And is there some other word  
8    that you would use to refer to them other  
9    than "sides"?

10          A.       Well, there is the diversion  
11       part of DEA, there's enforcement, there's  
12       intelligence, there's laboratories. So  
13       there's several different aspects to DEA.

14          Q.       So you said diversion,  
15       enforcement, lab --

16          A.       Intelligence, laboratories.

17          Q.       Is diversion funded differently  
18       than enforcement?

19          A.       It is.

20          Q.       How is that funding different?

21          A.       It's paid for through a fee  
22       account by fees paid by the registrants to  
23       register.

24          Q.       You said there's the laboratory  
25       section and the intelligence section.

5 MR. BENNETT: Objection.

6 Scope.

7 You can answer.

8 THE WITNESS: Yes, both.

9 QUESTIONS BY MS. MCCLURE:

10 Q. And how is enforcement funded?

11 MR. BENNETT: Objection.

12 Scope.

15 QUESTIONS BY MS. MCCLURE:

16 Q. What is on-call time, if you  
17 know?

18 A. I don't know.

19 Q. Okay. That's not something  
20 that happened in the diversion side?

21 A. No, it's nothing I've heard of.

22 Q. So if diversion is funded by  
23 fee accounts paid for by registrants, the  
24 fees that are set for registrants are at  
25 DEA's discretion and under DEA's control;

1 that right?

2 MR. BENNETT: Objection.

3 Scope.

4 THE WITNESS: They're set  
5 through a rulemaking process.

6 QUESTIONS BY MS. MCCLURE:

7 Q. That includes input from DEA?

8 A. Yes.

9 MS. MCCLURE: Why don't we go  
10 off the record and take a short break.

11 MR. BENNETT: Okay.

12 VIDEOGRAPHER: We're going off  
13 record. The time is 10:49.

14 (Off the record at 10:49 a.m.)

15 VIDEOGRAPHER: We're going back  
16 on record, beginning Media File  
17 Number 2. The time is 11:06.

18 QUESTIONS BY MS. MCCLURE:

19 Q. Still good morning, Mr. Mapes.

20 You understand that you're  
21 still under oath today?

22 A. I do.

23 Q. What is the role of a wholesale  
24 distributor?

25 A. To distribute drugs and other

1 products to the retail pharmacies and doctors  
2 and anyone else that has a need for them, if  
3 it's registered, if it's a controlled  
4 substance.

5 Q. So distributors and wholesalers  
6 sell more than just controlled substances?

7 A. Yes.

8 Q. A whole variety of products?

9 A. Yes.

10 Q. Do you understand the use of  
11 the term "distributors" and "wholesalers," do  
12 you use that interchangeably, or do you think  
13 of those as being different words?

14 A. Interchangeable.

15 Q. Do distributors sell  
16 pharmaceutical products directly to patients?

17 A. No.

18 Q. So they sell to other  
19 registrants within the supply chain, whether  
20 it's a retail pharmacy, a hospital customer,  
21 a physician, et cetera, right?

22 A. Correct.

23 Q. So prescriptions are written by  
24 doctors?

25 MR. BENNETT: Objection. Form.

1       QUESTIONS BY MS. MCCLURE:

2           Q.       In your knowledge?

3           A.       Among others.

4           Q.       Other health care professionals  
5       write a prescription, correct?

6           A.       Correct.

7           Q.       And then a patient takes that  
8       prescription generally to a pharmacy or to  
9       some other entity who is a registered -- if  
10      it's a controlled substance within the supply  
11      chain?

12       A.       Yes.

13       Q.       But not a wholesaler or a  
14      distributor?

15       A.       Correct.

16       Q.       And so an order that a  
17      wholesaler or a distributor receives from,  
18      say, a pharmacy is generally a bulk order,  
19      correct?

20       A.       Yes.

21       Q.       It's not intended to be -- it's  
22      not as if a pharmacy places an order to fill  
23      a specific person's prescription most  
24      commonly, right?

25       A.       Correct.

1                   Q.         Instead, the pharmacy or the  
2                   person ordering from the wholesaler has  
3                   grouped together an anticipated need for a  
4                   particular medication, and they order that in  
5                   bulk from a distributor, right?

6                   MR. BENNETT: Objection. Form.

7                   THE WITNESS: Correct.

8                   QUESTIONS BY MS. MCCLURE:

9                   Q.         So an order is not being filled  
10                  in response to a particular patient's  
11                  prescription?

12                  A.         Not normally.

13                  Q.         Is it your understanding that  
14                  distributors do not see prescription-level  
15                  data in the ordinary course of doing their  
16                  day-to-day business of filling orders placed  
17                  by other -- by their customers?

18                  MR. BENNETT: Objection. Form.

19                  THE WITNESS: They may see  
20                  prescription-level data when they're  
21                  establishing new customers or when  
22                  they're reviewing what's going on at a  
23                  pharmacy, but not when filling every  
24                  order.

25

1       QUESTIONS BY MS. MCCLURE:

2           Q.       In your experience,  
3       distributors conduct due diligence on new  
4       customers that they're considering bringing  
5       on board, correct?

6           A.       Yes.

7           Q.       And is it in that context that  
8       they may see some prescription-level data?

9           A.       That's one of the reasons they  
10      would.

11          Q.       And how would the distributor  
12      obtain that data in that new customer  
13      situation?

14          A.       By visiting the pharmacy and  
15      asking to see information about how many  
16      prescriptions, what drugs, frequency, that  
17      kind of thing.

18          Q.       So they would request it?

19          A.       Yes.

20          Q.       And then you also mentioned  
21      that in a, what I will call, ongoing due  
22      diligence situation when a customer is  
23      already a customer and you're evaluating  
24      whether there's some concern or problem with  
25      that customer, a distributor may obtain

## 1 prescription-level data?

2 A. Correct.

3                   Q.         During your time at DEA, you  
4    became familiar with the regulation regarding  
5    the identification and reporting of  
6    suspicious orders?

7 A. Yes.

8 Q. To your knowledge, has that  
9 regulation changed since it was issued or  
10 promulgated?

11 A. Not that I'm aware of.

12 Q. Is that something that you  
13 believe you would have been aware of in your  
14 course of employment at DEA and your  
15 subsequent employment?

## 16 A. Probably.

17 (Mapes Exhibit 3 marked for  
18 identification.)

19 QUESTIONS BY MS. MCCLURE:

20 Q. Okay. I'll hand you what's  
21 been marked as 3.

22 If you could take a look at  
23 that and let me know when you've had a chance  
24 to look through it.

25 A. I've reviewed it.

1                   Q.         So when we're talking about the  
2 regulation regarding to the identification  
3 and reporting of suspicious orders, which  
4 section of this Exhibit 3 are we talking  
5 about?

6                   A.         Suspicious orders ends in  
7 1301.74(b).

8                   Q.         And 1301.74(b) defines a  
9 suspicious order to include orders of unusual  
10 size, orders deviating substantially from a  
11 normal pattern and orders of unusual  
12 frequency, right?

13                  A.         Yes.

14                  Q.         Does the regulation explain to  
15 a registrant how to identify an order of  
16 unusual size?

17                   MR. BENNETT: Objection. Form.

18                   THE WITNESS: It does not.

19                  QUESTIONS BY MS. MCCLURE:

20                  Q.         Does the regulation explain to  
21 a registrant how to identify an order of  
22 unusual frequency?

23                   MR. BENNETT: Objection. Form.

24                   THE WITNESS: It does not.

25

1       QUESTIONS BY MS. MCCLURE:

2           Q.     Does the regulation explain to  
3     a registrant how to identify an order that  
4     deviates substantially from a normal pattern?

5            MR. BENNETT: Objection. Form.

6            THE WITNESS: It does not.

7       QUESTIONS BY MS. MCCLURE:

8           Q.     Registrants are responsible for  
9     designing their own suspicious order  
10   monitoring systems; is that correct?

11          A.     It is.

12          Q.     Is a registrant to take into  
13   account considerations that are unique to  
14   them in designing such a system, for example,  
15   their customer base?

16          A.     Yes.

17          Q.     So would one registrant  
18   potentially have a different-looking or  
19   different nature of a customer base than  
20   another registrant?

21          A.     Yes.

22          Q.     Is it possible that those  
23   registrants would then have designed  
24   different suspicious order monitoring  
25   systems?

1 A. It's possible.

2 Q. Is there a holy grail or  
3 articulated DEA model standard for what  
4 constitutes a suspicious order?

5 MR. BENNETT: Objection. Form.

6 THE WITNESS: Not that I'm  
7 aware of.

8 QUESTIONS BY MS. MCCLURE:

9 Q. And you've spent your 30-year  
10 career in DEA in diversion-related roles?

11 A. Yes.

12 Q. Does DEA define for registrants  
13 what essential features are that every  
14 suspicious order monitoring system must have  
15 to be compliant?

16 MR. BENNETT: You can answer.

17 THE WITNESS: They may talk  
18 with industry or with industry  
19 associations about those kind of  
20 things or answer specific questions  
21 from a registrant.

22 QUESTIONS BY MS. MCCLURE:

23 Q. So in your experience, DEA may  
24 answer a specific question from a registrant  
25 about a possible feature that that registrant

1 is considering for its suspicious order  
2 monitoring system and provide information to  
3 that registrant as to whether that feature  
4 would be compliant --

5 MR. BENNETT: Objection.

6 QUESTIONS BY MS. MCCLURE:

7 Q. -- with the Controlled  
8 Substances Act?

9 MR. BENNETT: Objection.

## 10 Incomplete hypothetical.

11 You can answer.

12 THE WITNESS: Yes.

13 QUESTIONS BY MS. MCCLURE:

14 Q. Tell me more about what you  
15 know about that.

16           A.       If a registrant asks a specific  
17 question, if having a particular part of a  
18 system is appropriate, they could give their  
19 opinion about whether that's appropriate as  
20 part of a system.

21 Q. But does DEA mandate that  
22 certain features must be included by every  
23 registrant within suspicious order monitoring  
24 systems?

25 A. No.

1                   Q.         So, for example, in your  
2     experience, would DEA instruct registrants  
3     that to be compliant, a suspicious order  
4     monitoring system must compare orders to  
5     orders received from other similarly sized  
6     pharmacies within a geographic area?

7                   MR. BENNETT: Objection.

8                   Vague. Incomplete hypothetical.

9                   Scope.

10                  You can answer within the  
11     limits of scope letter, if you can.

12                  THE WITNESS: DEA looks at them  
13     one registrant at a time, so they're  
14     not telling them to compare them with  
15     other registrants. Looking at each  
16     registrant uniquely.

17     QUESTIONS BY MS. MCCLURE:

18                  Q.         And is that because DEA affords  
19     registrants the discretion to design a  
20     compliant suspicious order monitoring?

21                  MR. BENNETT: Objection.

22                  Scope.

23                  You are not here to speak on  
24     behalf of DEA. You may speak in your  
25     personal capacity.

1 THE WITNESS: I'm now confused  
2 about what the question was.

### 3 QUESTIONS BY MS. MCCLURE:

4 Q. No problem.

5 In your experience, DEA affords  
6 registrants the discretion to design a  
7 suspicious order monitoring system that is  
8 effective?

9 MR. BENNETT: Same objection.

10 You may answer --

11 THE WITNESS: Yes.

12 MR. BENNETT: -- in your  
13 personal capacity.

14 QUESTIONS BY MS. MCCLURE:

15 Q. And so if I have this correct,  
16 DEA will advise as to a specific feature when  
17 requested, when information is requested by a  
18 registrant, but will not put together a list  
19 of the mandated features that every  
20 suspicious order monitoring system must  
21 include in order to be compliant.

22 Do I have that correct?

23           A.        I have talked with registrants  
24       in the past about specific aspects of their  
25       system in giving them advice. I'm not sure

1 if DEA is currently doing that or not.

2 Q. When you say you have "talked  
3 with registrants in the past about specific  
4 aspects of their system in giving them  
5 advice," is that in your capacity at DEA?

6 A. Yes.

7 Q. But in your experience, DEA  
8 does not publish, put forth, any sort of list  
9 of mandated requirements that must be in a  
10 suspicious order monitoring system in order  
11 for that system to be effective or compliant?

12 A. I haven't seen one.

13 Q. If you haven't seen a written  
14 list, are you aware of some informal list --

15 A. No.

16 Q. -- of features --

17 A. No, I'm not.

18 Q. -- that DEA mandates be  
19 included in every suspicious order monitoring  
20 system?

21 MR. BENNETT: Let her finish  
22 the question first.

23 THE WITNESS: Okay.

24 No.

25

1       QUESTIONS BY MS. MCCLURE:

2           Q.       If a former DEA diversion  
3       investigator identified a number of features  
4       that must be included in a suspicious order  
5       monitoring system in order for it to be  
6       compliant, would that match with your  
7       experience at DEA?

8                   MR. BENNETT: Objection.

9                   Scope. Incomplete hypothetical and  
10                  vague.

11                  You can answer in your personal  
12                  capacity but not on behalf of DEA.

13                  THE WITNESS: I'm not aware of  
14                  any that we've had, so it wouldn't be  
15                  consistent with what I have seen.

16       QUESTIONS BY MS. MCCLURE:

17           Q.       It would not be consistent with  
18       what you've seen or experienced in your time  
19       at DEA?

20           A.       That's correct.

21           Q.       Do you agree that there -- that  
22       the review of an order to determine whether  
23       it is suspicious or not is a subjective one?

24                   MR. BENNETT: Objection.

25                  Vague.

1                    You can answer.

2                    THE WITNESS: Yes.

3                    QUESTIONS BY MS. MCCLURE:

4                    Q. Meaning that the individual or  
5 entity reviewing that order takes into  
6 account the totality of the circumstances and  
7 makes a determination as to whether that  
8 order is or is not a suspicious order; is  
9 that right?

10                  A. Yes.

11                  Q. Have you heard the phrase  
12 "totality of circumstances" previously in the  
13 course of your tenure at DEA?

14                  A. I have.

15                  Q. Do you recall in what context  
16 you've heard that?

17                  A. Discussing suspicious orders.

18                  Q. And is that a phrase that's  
19 used commonly within DEA or the industry  
20 regarding reporting suspicious orders?

21                  A. I don't know that it's common.

22                  Q. Regardless -- okay.

23                    You've heard the term "totality  
24 of the circumstances" before?

25                  A. Yes.

1 Q. Okay. And as we discussed  
2 previously, each customer -- or I'm sorry,  
3 each registrant has a different customer  
4 base, right?

5 A. Correct.

6 Q. No customer -- or no  
7 registrant's customer base will exactly match  
8 that of another registrant?

9 A. Correct.

10 Q. And so the information  
11 available to one registrant regarding whether  
12 an order -- let me strike that and start  
13 over.

14 The information available to  
15 one registrant about a particular order and  
16 the customer placing it might be different  
17 than the information available to another  
18 registrant?

19 A. And you're using -- I don't  
20 quite understand the question yet.

21 Q. Okay. We've talked about how  
22 registrants have different customer bases,  
23 right?

24 A. Yes.

25 Q. And so when a registrant or a

1       wholesaler in this case is evaluating an  
2       order and trying to determine whether it's  
3       suspicious or not --

4                                  Are you with me?

5       A.       Uh-huh. Yes.

6       Q.       -- the information that  
7       Registrant A may have about that order or  
8       that customer may be different than the  
9       information that is available to  
10      Registrant B?

11                                  MR. BENNETT: Objection.

12                                  Vague. Incomplete hypothetical.

13                                  THE WITNESS: Yes, they may be  
14                                  different.

15      QUESTIONS BY MS. MCCLURE:

16       Q.       Each registrant conducts its  
17       own due diligence?

18       A.       They should.

19       Q.       To your knowledge, they should,  
20       right?

21       A.       Yes.

22       Q.       So do registrants, in your  
23       experience, share due diligence files?

24       A.       No.

25       Q.       Does the regulation -- I'm

1 looking back at Mapes Exhibit 3 -- define the  
2 form or format that a suspicious order report  
3 must take?

4 A. It does not.

5 Q. Does it say what information is  
6 supposed to be provided to DEA?

7 A. No, it doesn't.

8 Q. Does the regulation in Mapes  
9 Exhibit 3 say anything about whether a  
10 registrant can ship a suspicious order?

11 MR. BENNETT: Objection. Form.

12 THE WITNESS: No, it doesn't.

13 QUESTIONS BY MS. MCCLURE:

14 Q. And this section of the  
15 regulation, 1301.74(b), it has not changed  
16 since 1971?

17 A. I'm not aware of any changes.

18 Q. Are you familiar with excessive  
19 purchase reports?

20 A. Yes.

21 Q. What are they?

22 A. Reports that are sent by  
23 wholesalers of purchases of controlled  
24 substances that they, after the fact, think  
25 may be excessive.

1                   Q.         Was the submission of excessive  
2 purchase reports, in your experience,  
3 standard practice in the industry?

4                   A.         It was.

5                   Q.         Was there a particular time  
6 that you believe, in your experience, it was  
7 standard practice in the industry to submit  
8 those?

9                   A.         From the time I started with  
10 DEA in 1977 until we had the meetings with  
11 the individual wholesalers, that was the --  
12 the standard practice, to submit those.

13                  Q.         And in your experience, DEA  
14 reviewed those reports as compliant with the  
15 Controlled Substances Act?

16                  MR. BENNETT: Objection.

17                  Scope.

18                  This is not a 30(b)(6) witness  
19 who can speak on behalf of DEA.

20                  You may answer in your personal  
21 capacity within the limits of the  
22 scope letter.

23                  THE WITNESS: Yeah, I viewed  
24 those as compliant with the regulation  
25 for suspicious orders.

1       QUESTIONS BY MS. MCCLURE:

2           Q.       And in your experience of  
3       conducting audits of distribution centers,  
4       that was one of your roles as a diversion  
5       investigator, right?

6           A.       Yes.

7           Q.       Conducting audits?

8           A.       Yes.

9           Q.       And as a group supervisor, you  
10      would oversee diversion investigators who  
11      were conducting audits?

12          A.       That's correct.

13          Q.       And that would include a review  
14      of their suspicious order monitoring systems?

15          A.       That's correct.

16          Q.       Including the formats that they  
17      were using to submit and how they were  
18      identifying and reporting suspicious orders  
19      to DEA?

20          A.       Correct.

21          Q.       And in the course of your role  
22      as a diversion investigator and a group  
23      supervisor, you accepted these excessive  
24      purchase reports as compliant with the  
25      Controlled Substances Act?

1 MR. BENNETT: You can answer  
2 that.

3 THE WITNESS: Yes.

4 QUESTIONS BY MS. MCCLURE:

5 Q. You don't recall saying to  
6 anyone, "Hey, you can't submit these kinds of  
7 documents" in the course of your roles as a  
8 diversion investigator or a group supervisor?

9 MR. BENNETT: Objection.

10 Scope.

11 You are not authorized to  
12 disclose information regarding any  
13 specific DEA investigations or  
14 activities.

15 You may answer this question  
16 yes or no on whether you remember  
17 saying that.

18 THE WITNESS: Can you repeat  
19 the question?

20 QUESTIONS BY MS. MCCLURE:

21 Q. I can.

22 You don't recall saying to  
23 anyone, a registrant, for example, "You can't  
24 submit these kinds of excessive purchase  
25 reports and still be compliant with the

1 Controlled Substances Act" in your role as a  
2 diversion investigator or a group supervisor?

3 MR. BENNETT: Same objection.

4 You can answer.

5 THE WITNESS: No, I don't  
6 remember saying that.

7 QUESTIONS BY MS. MCCLURE:

8 Q. And we've been talking about  
9 excessive purchase reports, but sometimes  
10 people -- registrants would call them by  
11 different names.

12 Do you recall that, or in your  
13 experience were they all called excessive  
14 purchase reports?

15 A. Generally referred to as  
16 excessive purchase reports. Could be called  
17 suspicious order reports.

18 Q. And were they generally in a  
19 similar format across the industry?

20 MR. BENNETT: Objection. Form.

21 Vague.

22 You can answer it.

23 QUESTIONS BY MS. MCCLURE:

24 Q. Do you understand my question?

25 A. Yes.

1 They were in different formats  
2 depending on the company that was sending  
3 them. Some would send computer printouts.  
4 Some would send copies of invoices. So there  
5 are different ways that they were sent.

6 Q. They generally provided the  
7 same kind of information?

8 A. Yes.

9 Q. About purchases and sales that  
10 had already happened?

11 A. Correct.

12 0. And DEA accepted those?

13 MR. BENNETT: Objection.

14 QUESTIONS BY MS. MCCLURE:

15 0. In your personal experience?

16 MR. BENNETT: Scope.

17 You're not here as a 30(b)(6)  
18 witness to answer on behalf of DEA.

19 You may answer in your personal  
20 capacity of what you did.

21 THE WITNESS: Yes, we accepted  
22 those.

1 himself?

2 MS. MCCLURE: Mark --

3 MR. BENNETT: I believe that  
4 was his testimony, yes.

5 MS. MCCLURE: That is his  
6 testimony.

7 MR. LANIER: Okay.

8 QUESTIONS BY MS. MCCLURE:

9 Q. So in your personal experience,  
10 were you the only one who accepted these?

11 MR. BENNETT: You can answer.

12 THE WITNESS: No other groups  
13 accepted the same type of reports.

14 QUESTIONS BY MS. MCCLURE:

15 Q. So saying "we" is referring to  
16 you and those other groups, right?

17 A. The others that I was  
18 supervising at the time.

19 Q. So in the course of your role  
20 as a diversion investigator, as well as the  
21 time when you acted as a group supervisor and  
22 had diversion investigators reporting to you,  
23 yes?

24 A. Yes.

25 Q. Are you aware of DEA

1 headquarters approving particular suspicious  
2 order monitoring systems submitted by a  
3 registrant at any time in your experience at  
4 DEA?

5 MR. BENNETT: Objection. Form.

6 You can answer.

7 THE WITNESS: I do recall one  
8 time that I was in headquarters and we  
9 received a letter from a wholesaler  
10 about their suspicious order  
11 monitoring program, and we told them  
12 that it did comply with the  
13 requirements in the regulation.

14 QUESTIONS BY MS. MCCLURE:

15 Q. What role were you in when you  
16 received that letter?

17 A. The deputy chief of liaison and  
18 policy.

19 Q. And when you say "we" received  
20 that letter, were you personally involved  
21 with the approval of that suspicious order  
22 monitoring system?

23 MR. BENNETT: You can answer.

24 THE WITNESS: Yes.

25

1 QUESTIONS BY MS. MCCLURE:

2 Q. Who else is encompassed within  
3 that "we" that you've provided?

4           A.        A staff coordinator that  
5    reviewed the incoming correspondence from the  
6    company, drafted the response to the company  
7    and then sent it to me for approval, or in  
8    this case signature, to send it to the  
9    company.

10 Q. Did you sign that?

11 A. Yes.

12 Q. And what company was that?

13 A. AmerisourceBergen.

14 Q. Can you think of any other  
15 instances in which you have a personal  
16 recollection of DEA's approval of a  
17 suspicious order monitoring system?

18                   A.               No, I cannot.

19 (Mapes Exhibit 4 marked for  
20 identification.)

21 QUESTIONS BY MS. MCCLURE:

22 Q. I'm going to mark an exhibit as  
23 4. This is a series of letters exchanged,  
24 and they're all going to be amalgamated as  
25 one exhibit for today.

1                   If you could take a look  
2       through those letters and let me know when  
3       you've had a chance to review them.

4                   A.        Okay. I've generally reviewed  
5       them.

6                   Q.        Now, when I was previously  
7       asking you about approvals, you recalled a  
8       situation in which you had signed a letter to  
9       AmerisourceBergen.

10                  Is that a different set of  
11       letters or a letter that is not this set  
12       that's marked as Exhibit 4?

13                  A.        Yes, it's not included in here.

14                  Q.        Okay. So let me back up.

15                  This set of letters is dated in  
16       the '96 to '98 time period, right? Over a  
17       time span through '96, '97, and then ending  
18       in June 23rd -- I'm sorry, July 23, '98,  
19       right?

20                  A.        Correct.

21                  Q.        And these are exchanged between  
22       the Department of Justice, DEA Enforcement  
23       Administration -- I'm sorry, the Drug  
24       Enforcement Administration and Chris  
25       Zimmerman at Bergen, right?

1 A. Correct.

2 Q. So not AmerisourceBergen  
3 because this predated the merger with  
4 Amerisource.

5 Are you aware of that?

6 MR. BENNETT: Objection. Form.

9      QUESTIONS BY MS. MCCLURE:

Q. Yes, I can.

As of 1998, Bergen was a separate company from Amerisource.

13                           Do you know that, or am I  
14 telling you --

15 A. Yes.

Q. You are aware of that?

17 A. Yes, I am.

18 Q. Okay. You previously told me  
19 you had signed a letter approving a system  
20 that AmerisourceBergen had.

1                   A.         It was subsequent to this. It  
2         was after the merger of Amerisource and  
3         Bergen.

4                   Q.         Do you recall the approximate  
5         time period of the approval letter that you  
6         recall signing regarding AmerisourceBergen's  
7         suspicious order monitoring program that had  
8         to have been after 2001, which was the merger  
9         of those two companies?

10                  MR. BENNETT: Objection. Form.  
11                  THE WITNESS: No, I don't  
12                  recall the time frame.

13         QUESTIONS BY MS. MCCLURE:

14                  Q.         Can we agree it would have --  
15         you recall it being AmerisourceBergen, so  
16         after the merger in 2001, if I'm telling you  
17         the correct date of the merger, right?

18                  A.         Yes.

19                  Q.         Would it have been prior to  
20         2007, which is when there was a settlement  
21         and release agreement executed between DEA  
22         and AmerisourceBergen?

23                  A.         Yes.

24                  Q.         So sometime in between 2001 and  
25         2007, you recall a different exchange of

1 letters that is not reflected here in Mapes  
2 Exhibit 4 in which you signed a document, a  
3 letter, approving AmerisourceBergen's  
4 suspicious order monitoring system?

5 A. That's correct.

6 Q. In your experience at DEA,  
7 would letters approving suspicious order  
8 monitoring systems be things that were  
9 retained, kept by DEA?

10 MR. BENNETT: Objection.

11 Scope. Calls for speculation.

12 You can answer.

13 THE WITNESS: Generally all  
14 correspondence was retained.

15 QUESTIONS BY MS. MCCLURE:

16 Q. Okay. So is it reasonable to  
17 think that a letter approving a suspicious  
18 order monitoring system, of which you can  
19 only recall one instance of it happening,  
20 would be something that would be retained by  
21 DEA?

22 MR. BENNETT: Objection.

23 Scope. Calls for speculation.

24 You can answer.

25 THE WITNESS: Yes.

1       QUESTIONS BY MS. MCCLURE:

2           Q.       So you don't recall when in  
3       between '01 and '07 this would have been?

4           A.       It would have been while I was  
5       deputy chief of the liaison and policy  
6       section, so it would have been during that  
7       time frame.

8           Q.       And would you be so kind as to  
9       remind me to the best of your recollection  
10      when that time frame was?

11                  MR. BENNETT: Objection. Asked  
12      and answered.

13                  MS. MCCLURE: Yeah, it is asked  
14      and answered.

15                  MR. BENNETT: You can answer.

16                  MS. MCCLURE: I just don't  
17      remember.

18                  MR. BENNETT: You can answer  
19      again.

20       QUESTIONS BY MS. MCCLURE:

21           Q.       Was that approximate --

22                  MR. BENNETT: Wait a second.

23                  MS. MCCLURE: Okay.

24                  MR. BENNETT: You have a  
25      question pending.

1 MS. MCCLURE: Yeah, I have a  
2 question pending, you're right.

3 THE WITNESS: I can't recall  
4 the exact dates of that.

5 QUESTIONS BY MS. MCCLURE:

6 Q. But that was immediately prior  
7 to you becoming chief of the E-Commerce  
8 section in 2004?

9 A. No, it was immediately prior to  
10 me becoming chief of the administrative  
11 section.

12 Q. Planning and resources?

13 A. The planning and resources  
14 section.

15 Q. And you did that from  
16 approximately 2003 to 2004 as to your prior  
17 testimony?

18 A. Correct.

19 Q. So can we limit the time period  
20 for when this letter would have been as  
21 sometime between 2001 and then 2003 when you  
22 took over the chief of the planning and  
23 resources section?

24 A. Yes.

25 Q. Division? Section?

1 A. Section.

2 Q. Section.

3 Okay. So between '01 and '03.

4 Understanding you've been gone  
5 from DEA since 2007, do you have a copy of  
6 this letter in your personal possession?

7 A. No.

8 Q. Do you recall to whom you sent  
9 this letter approving of AmerisourceBergen's  
10 suspicious order monitoring system sometime  
11 between 2001 and 2003?

12 A. To Chris Zimmerman at  
13 AmerisourceBergen.

14 Q. How did that letter come about?  
15 What led to you -- strike that.

16 What led to you issuing that  
17 letter?

18 MR. BENNETT: Objection.

19 Scope.

20 You are not authorized to  
21 disclose the internal deliberative  
22 process of the Department of Justice  
23 or any attorney-client communication  
24 or privileged conversations.

25 To the extent you can answer

1                   the question without disclosing that  
2                   information, you may answer.

3                   THE WITNESS: It was in  
4                   response to a letter from  
5                   AmerisourceBergen.

6                   QUESTIONS BY MS. MCCLURE:

7                   Q.           Was that letter from  
8                   AmerisourceBergen from Chris Zimmerman?

9                   A.           It was.

10                  Q.           Did you know Chris Zimmerman at  
11                  the time -- in this 2001 to 2003 time period?

12                  A.           No.

13                  Q.           And you said you recall a staff  
14                  coordinator passing that letter on to you for  
15                  evaluation?

16                  A.           To review, yes.

17                  Q.           What do you recall, if  
18                  anything, doing to evaluate the request?

19                  A.           I don't --

20                  MR. BENNETT: Objection. Same  
21                  instruction regarding the internal  
22                  deliberative process.

23                  You can answer.

24                  THE WITNESS: I don't recall.

25

1       QUESTIONS BY MS. MCCLURE:

2           Q.       But you do recall that the end  
3       conclusion that you reached was to issue a  
4       letter back to Chris Zimmerman at  
5       AmerisourceBergen approving of the suspicious  
6       order monitoring system?

7           A.       That's correct.

8           Q.       The letters I showed you, which  
9       are Mapes Exhibit 4, do you recall whether  
10      you reviewed those letters in evaluating  
11      Chris Zimmerman's 2001 to 2003, somewhere in  
12      that time period, letter he sent to you on  
13      behalf of AmerisourceBergen?

14                  MR. BENNETT: Objection.

15                  Scope.

16                  You can answer that question  
17                  yes or no only, if you remember.

18                  THE WITNESS: I don't recall.

19       QUESTIONS BY MS. MCCLURE:

20           Q.       Do you recall if you were aware  
21      of these letters, meaning Mapes Exhibit 4,  
22      when you evaluated the subsequent 2001 to  
23      2003 request from Chris Zimmerman for  
24      approval of the AmerisourceBergen Drug  
25      Corporation suspicious order monitoring

1 system?

2 A. I don't recall seeing these  
3 when I was looking at that other letter.

4 Q. Meaning that you don't know if  
5 you did or not or -- let me ask you.

6 You don't know if you reviewed  
7 these letters or not when you evaluated that  
8 letter?

9 A. I don't believe that I did, but  
10 I don't know.

11 Q. You don't know for certain?

12 A. That's correct.

13 Q. Is this the first time that  
14 you've ever seen the letters that are  
15 reflected as Mapes Exhibit 4, when I've shown  
16 them to you, or have you seen them prior to  
17 today?

18 A. I don't recall seeing any of  
19 these letters before.

20 Q. It's possible you may have in  
21 the course of your time at DEA or in  
22 consulting with AmerisourceBergen, but  
23 sitting here today, you don't recall; is that  
24 correct?

25 MR. BENNETT: Objection.

1                    You can answer.

2                    Form.

3                    You can answer.

4                    THE WITNESS: Yeah, I don't  
5                    recall seeing them before.

6    QUESTIONS BY MS. MCCLURE:

7                    Q.         Did you take over the chief of  
8                    liaison and policy section role from Patricia  
9                    Good?

10          A.         No.

11          Q.         Who was previously in that role  
12                when you took it over?

13          A.         I was the deputy chief of  
14                liaison and policy working with Patricia.

15          Q.         I apologize.

16                So in this 2001 to 2003 time  
17                frame when you issued this letter approving  
18                of AmerisourceBergen's suspicious order  
19                monitoring system, at that time you were  
20                reporting to Patricia Good?

21          A.         Yes.

22          Q.         Okay. Was Thomas Gitchel the  
23                immediate prior chief of liaison and policy  
24                prior to Patricia Good, to your knowledge?

25          A.         Yes, he was.

1 MS. MCCLURE: Go off the  
2 record.

3 VIDEOGRAPHER: Going off the  
4 record. The time is 11:52.

5 (Off the record at 11:52 a.m.)

6 MR. LANIER: And the reason  
7 I've asked to go back on the record is  
8 because you are asking for production  
9 of this letter that you clearly had  
10 some indication, as you asked your  
11 questions, might exist. You have  
12 asked for the letter, and it has not  
13 been produced by them.

14 But by my recollection, and I'm  
15 having our people search diligently,  
16 it's not been presented by y'all,  
17 either.

18 MS. MCCLURE: Well, agreed.

19 SPECIAL MASTER COHEN: Why  
20 don't we --

21 MR. LANIER: If you've got that  
22 letter --

23 MS. MCCLURE: I thought he was  
24 finished.

25 MR. LANIER: If you've got that

1                   letter, you have not produced it prior  
2                   to this deposition. That's  
3                   outrageous.

4                   MS. MCCLURE: Mr. Lanier, I,  
5                   sitting here today, am not aware of  
6                   that letter.

7                   To the extent that you believe  
8                   that my questions, quote, clearly have  
9                   some indication that I'm aware of the  
10                  letter existing, that is false.

11                  MR. LANIER: Okay. As long as  
12                  you'll state on the record you had no  
13                  clue that that letter exists --

14                  MS. MCCLURE: Didn't I just do  
15                  that?

16                  MR. LANIER: That's fine. I'll  
17                  accept that from you.

18                  And I'll also accept that you  
19                  think your client's done a diligent  
20                  search and your client doesn't have  
21                  the letter or they sure would have  
22                  produced it because it's absolutely  
23                  subject to a lot of requests.

24                  MS. MCCLURE: Do you think that  
25                  that letter would have been in the

1                   best interests of my client to produce  
2                   had we located it?

3                   SPECIAL MASTER COHEN: Don't  
4                   need to argue amongst each other.

5                   MS. MCCLURE: Regardless,  
6                   Mr. Bennett, as we discussed off the  
7                   record and we will now memorialize on  
8                   the record, the defendants -- I do not  
9                   have the Touhy request in front of me.  
10                  Nevertheless, I believe it's fairly  
11                  obvious and not disputable that such  
12                  an approval letter of  
13                  AmerisourceBergen's 2000 -- some --  
14                  such an approval letter from DEA to  
15                  AmerisourceBergen sometime between the  
16                  2001-2003 time period, executed and  
17                  signed by Mr. Mapes, as he has  
18                  testified here today, would be  
19                  included within the scope of the  
20                  requests that the defendants have  
21                  made.

22                  I would request that DEA search  
23                  for and produce that letter to the  
24                  extent it can be located.

25                  Mr. Mapes has testified that in

1                   his experience such a letter would  
2                   have been retained by DEA, similar to  
3                   the letter that DEA did produce to  
4                   AmerisourceBergen dated July 23, 1998,  
5                   issued to Bergen Brunswig and having a  
6                   subject at the bottom of it called  
7                   "Approved Suspicious Order Monitoring  
8                   System, US-DEA-00025671."

9                   I would also request that for  
10                  the convenience of the witness that  
11                  search be conducted promptly, because  
12                  I will state now on the record that to  
13                  the extent the letter is produced  
14                  subsequent to Mr. Mapes deposition,  
15                  I'm in the unfortunate position, and  
16                  apologize to Mr. Mapes for doing this,  
17                  but we would request that his  
18                  deposition, to the extent it's not  
19                  produced today or tomorrow, be  
20                  reconvened to -- for the purpose of  
21                  questioning regarding that letter.

22                  MR. BENNETT: Counsel, I can  
23                  tell you that DEA did do a diligent  
24                  search for records responsive to the  
25                  requests that, in particular, the

1                   defense sent. It has produced a  
2                   number of documents.

3                   I have never seen the document  
4                   that was Mr. Mapes referenced, and to  
5                   the best of my knowledge, that was  
6                   never collected in the DEA's search  
7                   process and was not being withheld.

8                   I would ask DEA to do a search.

9                   I do want the parties to  
10                  understand that there are retention  
11                  schedules and documents are, in the  
12                  normal course of a government agency,  
13                  not retained beyond certain periods of  
14                  time.

15                  I do not know whether a  
16                  retention schedule would have applied  
17                  to this document and whether or not  
18                  it -- how long it would have been  
19                  retained. But I will ask DEA to look  
20                  for the document, and we'll make a  
21                  determination whether or not it can be  
22                  released or whether it needs to be  
23                  redacted and released.

24                  MS. MCCLURE: Regardless --

25                  MR. BENNETT: I will make that

1 at our next break.

2 MS. MCCLURE: Regardless, what  
3 I would ask in terms of whether the  
4 document can be produced or would have  
5 to be redacted, what I do ask is if  
6 their document located and it is being  
7 withheld, in other words, not just  
8 redacted and produced in redacted  
9 form, if the document is being  
10 withheld, we would ask that you  
11 confirm the existence of the document  
12 and explain what the reason is --

13 MR. BENNETT: Of course.

14 MS. MCCLURE: -- that you  
15 believe it should be withheld, not  
16 simply withhold the document.

17 MR. BENNETT: Of course.

18 Yes, I mean, I think we have to  
19 do a privilege log for any documents  
20 we withhold, so...

21 But at our next break, I will  
22 send an e-mail to DEA to see if they  
23 can locate it.

24 MS. MCCLURE: Thank you.

25 Mr. Mapes, apologies for the --

3 MS. MCCLURE: Yes, let's go  
4 back on video.

7 The time is 11:59.

8 QUESTIONS BY MS. MCCLURE:

9 Q. Mr. Mapes, thank you, and  
10 apologies for the -- as we said, sometimes  
11 there will be attorney sidebars and  
12 discussions, so thank you for your patience  
13 while we work through that.

14 A. Okay.

15 Q. Do you remember anything about  
16 the program that AmerisourceBergen submitted  
17 to you for -- with that request for approval  
18 in that 2001 to 2003 time frame?

19                   A.         No, I don't remember the  
20 details of it.

21 Q. Sitting here today and having  
22 reviewed Mapes Exhibit 4, which discusses --  
23 well, let's turn to the last document within  
24 that set of documents, which begins -- the  
25 little Bates numbers on the bottom say

1 319751.

2 A. Yes.

3 Q. That's a letter from Chris

4 Zimmerman at Bergen to Tom Gitchel dated

5 September 30, 1996, correct?

6 A. Yes, it is.

7 Q. And we don't need to read

8 through the entire letter, but is it your

9 understanding generally, having reviewed this

10 letter, that at the time Bergen was doing two

11 things to report a suspicious order; one was

12 monthly excessive purchase reports, correct?

13 MR. BENNETT: Objection. Form.

14 This witness lacks personal knowledge.

15 He said he'd never seen this letter

16 before.

17 QUESTIONS BY MS. MCCLURE:

18 Q. Okay. You've reviewed this  
19 letter when I handed it to you a few minutes  
20 ago, correct?

21 A. Correct.

22 Q. This letter -- I'm trying to  
23 avoid having to go through the whole letter  
24 and use up a lot of time, everyone's time,  
25 here. But essentially there were two methods

1 that this letter discusses, whether you've  
2 seen it before or not, that Bergen was using  
3 in 1998 to report and identify suspicious  
4 orders to DEA.

5 MR. BENNETT: Same -- I'm  
6 sorry.

7 QUESTIONS BY MS. MCCLURE:

8 Q. One of those was the provision  
9 of monthly excessive purchase reports,  
10 correct?

11 MR. BENNETT: Objection. Form.

12                   Lack of personal knowledge.

13 QUESTIONS BY MS. MCCLURE:

14 Q. And that's referenced on  
15 page 1, paragraph 2?

16 MR. BENNETT: You can answer  
17 the last question.

21 QUESTIONS BY MS. McCUIRE:

22 Q. And then in the next paragraph  
23 it also talks about phone calls placed by  
24 Bergen to DEA?

25 MR. BENNETT: Objection. Form.

1       QUESTIONS BY MS. MCCLURE:

2           Q.        Correct?

3           A.        Yes. Yes, it does.

4           Q.        And ultimately, the proposal in  
5        this letter was to prepare a daily suspicious  
6        order report of completed transactions that  
7        would go either via fax or some other method  
8        to DEA field offices.

9                   Is that your understanding  
10      having read this letter?

11                  MR. BENNETT: Objection. Form.

12                  THE WITNESS: I'm not certain  
13        that they're completed orders or sales  
14        or orders that they've received, from  
15        what it says here.

16       QUESTIONS BY MS. MCCLURE:

17           Q.        Okay. Do you recall whether  
18       the letter that you approved sometime between  
19       2001 and 2003 reflected daily reports going  
20       to DEA field offices from AmerisourceBergen  
21       of suspicious orders?

22           A.        I don't recall.

23           Q.        Okay. So reviewing this letter  
24       does not refresh your recollection as to what  
25       it was you approved sometime between 2001 and

1 2003?

2 A. No, it does not.

3 (Mapes Exhibit 5 marked for  
4 identification.)

5 QUESTIONS BY MS. MCCLURE:

6 Q. Okay. This is Mapes 5. It's a  
7 single-page document.

8 Now, Mr. Mapes, on the previous  
9 document I handed -- oh, let me know when  
10 you've had a chance to review it. Apologies.

11 A. Okay.

12 Q. So having done a comparison,  
13 this document is, I believe, the DEA's  
14 version of the same letter that's attached as  
15 Mapes Exhibit 4. It's produced by the DEA,  
16 which we can tell because at the bottom it  
17 says US-DEA-00025671.

18 Do you see that at the bottom?

19 A. Yes, I do.

20 Q. And the difference is that at  
21 the bottom there's a blacked-out box which is  
22 a redaction implemented by DEA, and then the  
23 subject added there is "approved suspicious  
24 order monitoring system."

25 Are you familiar with these

1 subjects or notations at the bottom of DEA  
2 copies of letters and communications in your  
3 experience at DEA?

4 MR. BENNETT: Objection.

5 Scope.

6 You may answer that question  
7 yes or no only.

8 THE WITNESS: No, I'm not.

9 MS. MCCLURE: Okay. You can  
10 set that aside.

11 (Mapes Exhibit 6 marked for  
12 identification.)

13 QUESTIONS BY MS. MCCLURE:

14 Q. I'm going to hand you a  
15 document that is marked Mapes Exhibit 6.

16 And I just realized -- I  
17 apologize for the record -- I have not been  
18 reading Bates numbers in. US-DEA-00001771.

19 Take a look at that and let me  
20 know when you've had a chance to review it.

21 A. I've reviewed it.

22 Q. Have you seen this document  
23 before?

24 A. I have.

25 Q. Did you see this document, to

1       the best of your recollection,  
2       contemporaneously with it being issued in or  
3       around December of 2007, or have you seen  
4       this document more -- only more recently?

5           A.       Only more recently.

6           Q.       By "only more recently," is  
7       that referencing the two meetings that you  
8       had with DEA counsel to both give information  
9       to them and prepare for this deposition, or  
10      did you see this letter in connection with  
11      your summer and fall 2018 meeting with  
12      plaintiffs' counsel?

13                  MR. BENNETT: Objection. Form.

14                  THE WITNESS: I don't recall  
15                  seeing it with meetings with plaintiff  
16                  counsel.

17                  I didn't see it at DEA because  
18                  I was retired before the letter was  
19                  sent out.

20                  I did see it yesterday in  
21                  preparation for the deposition.

22      QUESTIONS BY MS. MCCLURE:

23                  Q.       To the best of your  
24       recollection then, the first time you recall  
25       seeing this letter was yesterday?

1           A.       No, I've seen it other times  
2       between the time I retired and yesterday.

3           Q.       Do you recall how you saw it  
4       those other times?

5           A.       It was from a registrant, I  
6       can't remember which one, but a registrant  
7       that sent it to me that had received it from  
8       DEA.

9           Q.       Do you recall whether it would  
10      have been shortly after this letter was sent  
11      in the early course of your consulting work,  
12      or was it later than that, if you can --

13          A.       It was later than that.

14          Q.       So it's fair to say from your  
15      answers that you, it seems, did not review  
16      this letter prior to it being issued, say, in  
17      the last months of your tenure at DEA?

18                   MR. BENNETT: Objection.

19                   Scope.

20                   You're not authorized to  
21      disclose the internal deliberations of  
22      DEA.

23                   You may answer that question  
24      yes or no only, whether you saw it  
25      prior to leaving DEA, a draft.

1 THE WITNESS: No, I did not.

2 QUESTIONS BY MS. MCCLURE:

3 Q. If we look at paragraph 3 of  
4 this letter, the second sentence says,  
5 "Filing a monthly report of completed  
6 transactions, e.g., excessive purchase report  
7 or high unit purchases, end parens, does not  
8 meet the regulatory requirement to report  
9 suspicious orders."

10                           Based on your experience at  
11 DEA, was this a change in how DEA handled  
12 suspicious order reporting?

13 MR. BENNETT: Objection.

14 Scope.

15 You're not here as a 30(b)(6)  
16 witness to talk on behalf of DEA.

17 You may disclose your personal  
18 knowledge regarding this topic from  
19 your time at DEA, what you personally  
20 did.

21 THE WITNESS: I believe from my  
22 experience it was a change.

23 QUESTIONS BY MS. MCCLURE:

24 Q. Because previously in your  
25 experience at DEA excessive purchase reports

1 had been accepted by DEA for suspicious order  
2 reporting as you previously testified,  
3 correct?

4 MR. BENNETT: Objection.

5 Scope. This is not a 30(b)(6) witness  
6 that can answer on behalf of DEA.

7 You may answer what you  
8 personally did while at DEA in  
9 response to that question.

10 THE WITNESS: It was a change  
11 that was started, from my experience,  
12 when we had the meetings with  
13 individual wholesalers, individual  
14 distributors, starting in 2005.

15 QUESTIONS BY MS. MCCLURE:

16 Q. So in 2005, which you've just  
17 referenced, you began talking with  
18 distributors on something called the  
19 Distributor Initiative?

20 A. That's correct.

21 Q. Whose idea was the Distributor  
22 Initiative?

23 MR. BENNETT: Objection.

24 Scope. Objection.

25 You're not to disclose internal

1                   deliberative process.

2                   If you know of a person who  
3                   came up with the idea for a  
4                   Distributor Initiative, you may answer  
5                   who that person was.

6                   THE WITNESS: I'm not sure I  
7                   can answer the question.

8                   MR. BENNETT: Can we go off the  
9                   record for a minute?

10                  MS. MCCLURE: Yeah.

11                  VIDEOGRAPHER: We're going off  
12                  record. The time is 12:14.

13                  (Off the record at 12:14 p.m.)

14                  VIDEOGRAPHER: We're going back  
15                  on record. Beginning of Media File 4.  
16                  The time is 12:17.

17                  MR. BENNETT: So the witness  
18                  can answer the question as far as the  
19                  people who came up with the idea.

20                  In addition, we did discuss and  
21                  would prefer to wait until one o'clock  
22                  for the lunch break because we started  
23                  late this morning, and it would make  
24                  the afternoon very long if we go two  
25                  hours and then we have the rest of the

1 time in the afternoon.

2 So if the parties would agree,  
3 we'd prefer to wait until -- take the  
4 lunch break at one o'clock.

5 MS. MCCLURE: Provided that my  
6 personal comfort situation will last  
7 us until one o'clock, we can do that.

8 MR. BENNETT: Well, we can take  
9 a quick break, but as far as the lunch  
10 break goes, we'd rather wait.

11 If you want to take a comfort  
12 break --

13 MS. MCCLURE: Okay. I would  
14 like to take a five-minute comfort  
15 break.

16 MR. BENNETT: So let's have his  
17 answer. We'll take --

18 MS. MCCLURE: So let's have you  
19 answer. We'll do five really short,  
20 short, short five -- three to five  
21 minutes and then go back on.

22 MR. BENNETT: And then we can  
23 do a lunch break 1, 1:30, whatever.

24 MS. MCCLURE: Yeah. Exactly.

25 MR. BENNETT: All right. You

1 can answer the last question, based on  
2 our conversation, as far as the name  
3 of the individuals.

4 THE WITNESS: It was Kyle  
5 Wright and myself that initiated that.

6 MS. MCCLURE: Okay. Quick  
7 five-minute-or-less break.

8 VIDEOGRAPHER: Going off the  
9 record. The time is 12:18.

10 (Off the record at 12:18 p.m.)

11 VIDEOGRAPHER: Going back on  
12 the record. Beginning of Media  
13 File 5. The time is 12:27.

14 QUESTIONS BY MS. MCCLURE:

15 Q. Okay. So Kyle Wright and  
16 yourself initiated the Distributor  
17 Initiative?

18 A. That's correct.

19 Q. Is it sometimes called the  
20 distributor briefings?

21 A. Yes.

22 Q. Do you -- okay.

23 So those are interchangeable?

24 A. They are.

25 Q. And what was the reason that

1 you and Mr. Wright initiated the distributor  
2 briefings?

3 MR. BENNETT: Objection.

4 Scope. Internal deliberative process.

5 You may answer why the  
6 initiative was started but may not  
7 give specifics of the deliberations.

8 THE WITNESS: It was started in  
9 response to the Internet pharmacy  
10 issue.

11 QUESTIONS BY MS. MCCLURE:

12 Q. What was the Internet pharmacy  
13 issue?

14 A. That was when websites were  
15 starting to offer their service to patients,  
16 doctors and pharmacies to put the three  
17 together so that patients could get a  
18 prescription filled by a pharmacy after  
19 completing a questionnaire on a website and  
20 getting that approved by a doctor for a  
21 prescription, and a pharmacy getting the  
22 prescriptions and filling those and sending  
23 them to the patients.

24 Q. So DEA's concern, am I right,  
25 that there was not a doctor-patient

1 relationship in this scenario, the Internet  
2 pharmacy situation?

3 A. That's one of the concerns,  
4 yes.

5 Q. What was the other concern?  
6 I'm sorry if I missed it.

7 A. That the pharmacies were  
8 filling prescriptions for patients that they  
9 knew nothing about, for doctors that weren't  
10 within the geographic area, all for the same  
11 drug.

12 Q. Okay. And this Internet  
13 pharmacy issue, as you called it, was  
14 concerning to DEA?

15 A. It was concerning to me, yes.

16 Q. In fact, by 2005, were Internet  
17 pharmacies overwhelming DEA and exhausting  
18 its resources as -- in your experience during  
19 that time period?

20 MR. BENNETT: Objection.

21 Scope.

22 You may answer in your personal  
23 experience and not on behalf of DEA.

24 THE WITNESS: There were a  
25 significant number of investigations,

1 and the investigations are lengthy.

2 QUESTIONS BY MS. MCCLURE:

3 Q. So is that, yes, that the  
4 resources needing to be devoted to the  
5 Internet pharmacy issue were becoming a  
6 problem or a concern?

7 A. A concern.

8 Q. A concern.

9 So you, together with  
10 Mr. Wright, developed presentations for  
11 distributors, correct?

12 A. That's correct.

13 Q. Was it basically the same  
14 presentation given multiple times, or did the  
15 presentation itself change?

16 A. It was the same basic  
17 presentation with some unique information  
18 about sales of each specific wholesaler that  
19 we were talking with.

20 Q. And before you gave -- or held  
21 the first distributor briefing, had you  
22 gotten your PowerPoint approved by DEA?

23 MR. BENNETT: Objection.

24 Scope.

25 You are not authorized to

1           disclose the internal deliberative  
2           process or any advice you received  
3           from counsel.

4           You may answer the last  
5           question yes or no only, whether there  
6           was formal approval of DEA of the  
7           final PowerPoint.

8           THE WITNESS: Yes, there was.

9           QUESTIONS BY MS. MCCLURE:

10          Q.       And did you give this  
11         presentation to individual distributors or  
12         distributors as a whole?

13          How did it work?

14          A.       Individual distributors.

15          Q.       And how would you communicate  
16         to the distributors that there was a new  
17         initiative starting?

18          How did you communicate?

19          A.       Called them and asked them to  
20         come to headquarters to discuss it.

21           (Mapes Exhibit 7 marked for  
22         identification.)

23           QUESTIONS BY MS. MCCLURE:

24          Q.       I'm going to mark a document  
25         Exhibit 7.

1 And for the record,

2 US-DEA-00000147 through 164?

3 A. Okay. I've reviewed it.

4 Q. Okay. The first page of this  
5 document that ends in 147, what is this?

6           A.       This is a memo that I signed to  
7       William Walker, who was the deputy assistant  
8       administration in diversion, about a meeting  
9       that was held on August 10th with Steve Mays  
10      of the AmerisourceBergen Drug Company.

11 Q. And this memo was authored by  
12 you, right?

13 That's your signature?

14                   A.         Yeah, it was actually authored  
15 by Kyle Wright, and I signed it.

16 Q. Okay. But you signed it after  
17 reviewing it, I assume?

18 A. Yes.

19 Q. Right?

20 A. Yes.

21 Q. And you wouldn't have signed it  
22 unless it was a complete and accurate  
23 description of the meeting you had had?

24 MR. BENNETT: Objection. Form.

25

1       QUESTIONS BY MS. MCCLURE:

2           Q.       Let me strike that.

3                   Is this a complete and accurate  
4       description of the meeting that you had with  
5       Steve Mays?

6           A.       As I remember it, yes.

7           Q.       And then the second document  
8       that begins 149 and ends at 162, what is that  
9       document?

10          A.       That is a copy of the  
11       PowerPoint presentation that was used in the  
12       meeting.

13          Q.       So this is DEA's PowerPoint  
14       presentation, correct?

15          A.       Yes.

16          Q.       In other words, it's not a  
17       presentation AmerisourceBergen brought; it's  
18       a DEA-authored presentation, correct?

19          A.       Yes.

20          Q.       The presentation that you  
21       previously testified you had approved as part  
22       of the distributor briefings, right?

23          A.       Yes.

24          Q.       And then the last document,  
25       which is 163 to 164, what is that?

1                   A.         Those are some questions that  
2         we provided to AmerisourceBergen that could  
3         be asked to help them in their  
4         decision-making process about whether or not  
5         to ship controlled substances to a specific  
6         pharmacy.

7                   Q.         To Internet pharmacies?

8                   A.         In this case we were discussing  
9         Internet pharmacies, yes.

10                  Q.         That was the purpose of the  
11         meeting you had with AmerisourceBergen on  
12         August 10, 2005, correct?

13                  A.         Yes, it was.

14                  Q.         To discuss Amerisource -- I  
15         mean to discuss Internet pharmacies?

16                  A.         Yes.

17                  Q.         And that's what it says -- and  
18         if we flip back to the first page of Mapes 7,  
19         the purpose of the meeting was to address the  
20         illegal domestic Internet pharmacy problem  
21         and their source of supply.

22                              That's at the bot -- first  
23         paragraph?

24                  A.         Yes.

25                  Q.         And the memo is called "The

1 Internet Presentation," right?

2 A. It is.

3 Q. And the title of the document  
4 that begins on 149, which is the PowerPoint  
5 that you gave, is called "Internet Pharmacy  
6 Data," right?

7 A. Yes.

8 Q. And from the memo that you  
9 wrote -- I'm sorry, that Kyle Wright wrote  
10 and you signed, it looks like you led -- you,  
11 Michael Mapes, led this distributor briefing  
12 with AmerisourceBergen, this particular one,  
13 right?

14 A. That's correct.

15 Q. This was the first distributor  
16 briefing?

17 A. It was.

18 Q. Why start with  
19 AmerisourceBergen Drug Corporation?

20 A. I don't recall why.

21 Q. Okay. And at the conclusion of  
22 the presentation, from your memo, it seems  
23 that Mr. Mays had arrived to this meeting  
24 with some material for DEA -- I'm sorry,  
25 that's not at the end of the memo. That's at

1       the bottom of page 1 of the memo.

2                          Do you see that?

3           A.           Yes, I do.

4           Q.           Do you recall Mr. Mays arriving  
5                          at this meeting with material to discuss with  
6                          you?

7           A.           No.

8           Q.           Do you recall when you set  
9                          up -- well, first of all, let me back up.

10                          Did you personally set up this  
11                          meeting with Steve Mays?

12           A.           I did.

13           Q.           Do you recall your conversation  
14                          with Steve Mays to set up this meeting?

15           A.           No.

16           Q.           So it appears that Mr. Mays  
17                          presented a sales profile for a pharmacy.

18                          Do you see that?

19           A.           Yes, I do.

20           Q.           Did you know Mr. Mays before  
21                          this meeting?

22           A.           I had seen him at industry  
23                          meetings and that kind of thing. Didn't know  
24                          him well.

25           Q.           How would you describe

1       Mr. Mays' demeanor during this meeting?

2           A.       I really don't recall.

3           Q.       Okay. At the end of the memo  
4       on the top of the document Bates-labeled 148,  
5       the -- I'm sorry, the third full paragraph,  
6       it says, "It was agreed that if E-Commerce  
7       operations were to identify a highly  
8       suspicious pharmacy to which  
9       AmerisourceBergen was the wholesaler, that  
10      OC -- ODCO" --

11                  That stands for E-Commerce  
12       operations, right?

13           A.       Yes.

14           Q.       -- "would notify  
15       AmerisourceBergen via e-mail of the  
16       suspicious activity for AmerisourceBergen to  
17       review and take the actions the company deems  
18       appropriate."

19                  Do you recall that portion of  
20       the meeting?

21           A.       No.

22           Q.       Subsequent to this, do you  
23       recall reaching out to AmerisourceBergen to  
24       notify AmerisourceBergen of any suspicious  
25       activity that DEA wanted AmerisourceBergen to

1 review and take appropriate action?

2 MR. BENNETT: Objection.

3 Scope.

4 You're not authorized to  
5 disclose information about specific  
6 investigations.

7 At this time you can answer  
8 this question yes or no only regarding  
9 whether you remember having such  
10 conversations.

11 THE WITNESS: No, I don't  
12 recall any specific conversations.

13 QUESTIONS BY MS. MCCLURE:

14 Q. Was Mr. Mays cooperative during  
15 this meeting, to your recollection?

16 MR. BENNETT: Objection. Form.

17 Vague.

18 THE WITNESS: I just don't  
19 recall.

20 QUESTIONS BY MS. MCCLURE:

21 Q. Okay. Other than what is  
22 outlined in this memo and the presentation,  
23 was there anything else discussed with  
24 Mr. Mays during this briefing?

25 A. I don't recall.

1           Q.       If there was anything else  
2       discussed, is it fair to say that your  
3       practice would have been to put it in a memo  
4       or in the presentation?

5           A.       In the memo.

6           Q.       Okay. So if there's anything  
7       else discussed, it would be in the memo  
8       itself?

9           A.       Right.

10                   (Mapes Exhibit 8 marked for  
11       identification.)

12   QUESTIONS BY MS. MCCLURE:

13           Q.       Okay. A document marked as 8.  
14                   Let me know when you've had a  
15       chance to review that document.

16           A.       Okay. I've reviewed it.

17           Q.       Okay. So this is a similar  
18       presentation titled "Internet Presentation  
19       with McKesson Corp" for the memo on page 1 of  
20       this Mapes 8, right?

21           A.       Yes, it is.

22           Q.       And this is a similar document  
23       to what we just reviewed.

24                   There's a cover memo followed  
25       by a somewhat clearer copy of the

1 presentation, and that's MCKMDL00496859 to  
2 875, right?

3 A. Yes.

4 Q. And same -- may not be  
5 literally identical, but the same basic  
6 presentation you had given to  
7 AmerisourceBergen Drug Corporation, correct?

8 A. Yes.

9 Q. And again, for the same  
10 purpose, Internet pharmacies?

11 A. Yes.

12 Q. And again, if there had been  
13 something additional discussed in your  
14 meeting, you would have included it in the  
15 cover memo?

16 A. Yes.

17 (Mapes Exhibit 9 marked for  
18 identification.)

19 QUESTIONS BY MS. MCCLURE:

20 Q. And Mapes 9, US-DEA-00000352  
21 through 366.

22 A. Okay. I've reviewed that.

23 Q. Okay. And that is a similar  
24 memo followed by the PowerPoint presentation  
25 that you provided to Cardinal Health on the

1 topic of Internet pharmacies on August 22,  
2 2005?

3 A. It is.

4 Q. Okay. And again, may not be  
5 literally identical, but the same basic  
6 presentation you had given to  
7 AmerisourceBergen Drug Corporation and  
8 McKesson, correct?

9 A. Yes.

10 Q. For the same purpose, Internet  
11 pharmacy issues?

12 A. Yes.

13 Q. And again, if there had been  
14 something additional discussed in your  
15 meeting, you would have included it in your  
16 cover memo?

17 A. Yes.

18 Q. And we've gone through  
19 AmerisourceBergen Drug Corporation, Cardinal  
20 and McKesson.

21 Did you give similar  
22 presentation to other registrants during the  
23 '05-'06 time frame?

24 A. Yes.

25 Q. Did you personally continue to

1 give distributor briefings in your role as  
2 the chief of the regulatory section?

3 A. I don't recall.

4 Q. So at the time, these ones that  
5 we've gone through in 2005, you were the  
6 chief of the E-Commerce section; is that  
7 right?

8 A. Correct.

9 Q. And you don't recall whether  
10 you -- when you shifted to the new role as  
11 the chief of regulatory section, whether you  
12 continued to give these distributor  
13 briefings?

14 A. I just don't recall.

15 Q. Do you know whether -- do you  
16 know whether the briefings continued into the  
17 year 2007, whether you were involved with  
18 them or not?

19 A. There were other briefings, but  
20 I don't recall exactly the time frame of  
21 them.

22 Q. Okay. What is a termination  
23 notice in relation to a pharmacy?

24 A. I'm not sure whose terminology  
25 that is.

1                   Q.         Okay. Would sometimes DEA  
2       inform registrants that another registrant  
3       had stopped shipping controlled substances to  
4       a pharmacy?

5                   A.         That was done for a short  
6       period of time, yes.

7                   Q.         And do you know what short  
8       period of time that process was done for?

9                   A.         No, I don't recall.

10                  (Mapes Exhibit 10 marked for  
11                  identification.)

12   QUESTIONS BY MS. MCCLURE:

13                  Q.         Okay. I'm going to hand you a  
14       document marked 10, which is  
15       CAH\_MDL\_PRIORPROD\_DEA07\_00857912-R.

16                  A.         Okay.

17                  Q.         Is this an example of an  
18       instance where DEA would advise wholesalers  
19       that distribution of controlled substances  
20       had been halted to -- let me rephrase that.

21       Sorry.

22                  Is this an example of DEA  
23       notifying registrants of an immediate  
24       suspension order for certain DEA  
25       registrations?

1 A. Yes, it is.

2 Q. Okay. You can put that one  
3 aside.

4 (Mapes Exhibit 11 marked for  
5 identification.)

6 QUESTIONS BY MS. MCCLURE:

7 Q. And I will mark Mapes 11, which  
8 is all -- the same intro to the Bates number,  
9 ending in 01106667-R.

10 A. Okay.

11 Q. Is this document that I've  
12 marked as Mapes 11 an example of DEA  
13 notifying registrants that a certain  
14 distributor who's unnamed had cut back on  
15 sales of hydrocodone combination products?

16 MR. BENNETT: Objection.

17 Foundation. Vague.

18 QUESTIONS BY MS. MCCLURE:

19 Q. You can answer, if you can.

20 A. It is.

21 Q. And this document is dated  
22 January 11, 2006.

23 Does reviewing this document  
24 refresh your recollection of the time period  
25 during which DEA would advise registrants

1       about pharmacy activity, either terminations  
2       or, as in this example, cutbacks took place?

3           A.       It's an example of that, yes.

4           Q.       And does it refresh your  
5       recollection as to the time period?

6           A.       Yes.

7           Q.       At least in '06?

8           A.       Yes.

9           Q.       Do you know how long after  
10      January 11, 2006, DEA engaged in this  
11      practice?

12          A.       No, I don't.

13          Q.       Do you know why this practice  
14      was halted?

15                   MR. BENNETT: Objection.

16                   Scope.

17                   You can answer that question  
18      yes or no but may not disclose  
19      internal deliberative process or  
20      attorney-client privileged  
21      communications.

22                   THE WITNESS: Yes.

23      QUESTIONS BY MS. MCCLURE:

24          Q.       Can you tell me why this  
25      practice was halted?

1 A. No.

2 Q. Is that because your counsel --  
3 or DEA counsel, Mr. Bennett, has instructed  
4 you not to reveal internal deliberative  
5 process or attorney-client privileged  
6 communications?

7 A. Yes.

8 Q. Okay. Looking back at that  
9 exhibit, it looks like it went to an e-mail  
10 address called ODC@USDOJ.gov.

11 Do you know what that means?

12 A. No, I don't recall.

13 Q. Is that possibly an internal  
14 distribution list that was set up for  
15 purposes of communicating with registrants?

16 MR. BENNETT: Objection. Calls  
17 for speculation.

18 THE WITNESS: I just don't  
19 recall.

20 QUESTIONS BY MS. MCCLURE:

21 Q. Why did DEA send this  
22 information that's reflected in Mapes 11 to  
23 registrants?

24 MR. BENNETT: Objection.

25 Scope.

1                    You're not a 30(b)(6) witness  
2                    to answer on behalf of DEA. You may  
3                    answer based on your reason for  
4                    sending the e-mail while you were  
5                    there.

6                    THE WITNESS: My reason for  
7                    sending the e-mail was to provide  
8                    additional information to the  
9                    wholesalers when they're making a  
10                  decision about selling controlled  
11                  substances to a specific registrant.

12                  QUESTIONS BY MS. MCCLURE:

13                  Q.         Because you believed that the  
14                  additional information would be helpful to  
15                  wholesalers?

16                  A.         Yes.

17                  Q.         Based on your experience, would  
18                  a distributor have a way to know about  
19                  another distributor's actions in cutting off  
20                  or cutting back supply to a pharmacy, other  
21                  than your e-mail that we just looked at of  
22                  Mapes 11?

23                  MR. BENNETT: Objection.

24                  Vague.

25                  You can answer.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Okay. Do you recall whether  
8 you or others with whom you worked, to the  
9 extent you know, sent this kind of  
10 information out frequently or whether it was  
11 uncommon?

12 MR. BENNETT: Objection.

## 13                  Vague.    Compound.

14 THE WITNESS: Uncommon.

15 QUESTIONS BY MS. MCCLURE:

16 Q. In the course of your  
17 employment at DEA, you were aware that  
18 registrants were shipping orders that had  
19 been reported to DEA as suspicious, right?

20 MR. BENNETT: Objection.

21 Scope.

24 You may answer based on your  
25 personal recollection.

6 QUESTIONS BY MS. MCCLURE:

7 Q. Does the Controlled Substances  
8 Act say that registrants should not ship  
9 suspicious orders?

10 MR. BENNETT: Objection. Form.  
11 Calls for a legal conclusion.

12 You can answer based on your  
13 personal capacity, not on behalf of  
14 DEA.

15 If you know.

16 THE WITNESS: Not specifically,  
17 no.

18 QUESTIONS BY MS. MCCLURE:

19 Q. And if an order is unusual in  
20 size, frequency or pattern, do you agree that  
21 that does not necessarily mean that that  
22 order is going to be diverted?

23 MR. BENNETT: Objection.

24                   Vague.   Objection.   Incomplete  
25                   hypothetical.

1                    You can answer it.

2                    THE WITNESS: I agree.

3                    QUESTIONS BY MS. MCCLURE:

4                    Q.         And so the fact that an order  
5        or a portion of an order is diverted after a  
6        distributor ships it, would you agree that  
7        that does not make that order that has  
8        already been shipped now suspicious, if it  
9        was not suspicious at the time it was  
10      shipped?

11                  MR. BENNETT: Objection.

12                  Vague. Objection. Calls for  
13                  speculation. Legal conclusion.

14                  You may answer in your personal  
15        capacity but not on behalf of DEA.

16                  THE WITNESS: I don't really  
17        understand the nuances there.

18                  QUESTIONS BY MS. MCCLURE:

19                  Q.         Okay. If an order is not  
20        suspicious and is therefore filled and  
21        shipped and later downstream is diverted,  
22        that fact of that diversion does not now  
23        render the order suspicious; do you agree  
24        with that?

25                  MR. BENNETT: Objection. Same

1                   objections.

2                   You can answer in your personal  
3                   capacity.

4                   THE WITNESS: Yes.

5                   QUESTIONS BY MS. MCCLURE:

6                   Q.         Similarly, if an order is  
7                   regarded as suspicious but is shipped, would  
8                   you agree that that order is not necessarily,  
9                   in fact, going to be diverted?

10                  MR. BENNETT: Objection. Calls  
11                  for speculation. Vague. Incomplete  
12                  hypothetical. Outside the scope.

13                  You may answer in your personal  
14                  capacity but not on behalf of DEA.

15                  THE WITNESS: Yes.

16                  MS. MCCLURE: It's 1:06. I'm  
17                  going to suggest we go ahead and take  
18                  a lunch break. That may allow us to  
19                  streamline.

20                  MR. BENNETT: Okay. That's  
21                  fine.

22                  VIDEOGRAPHER: We're going off  
23                  record. The time is 1:06.

24                  (Off the record at 1:06 p.m.)

25                  VIDEOGRAPHER: We're going back

1                   on the record. Beginning of Media  
2                   File Number 6. The time is 2:11.

3                   QUESTIONS BY MS. MCCLURE:

4                   Q.           Good afternoon, Mr. Mapes.

5                   You understand you're still  
6                   under oath?

7                   A.           I do.

8                   Q.           Okay. Are you aware that DEA  
9                   issued an order to show cause and immediate  
10                  suspension order served on April 24, 2007, to  
11                  AmerisourceBergen Drug Corporation?

12                  MR. BENNETT: You can answer.

13                  THE WITNESS: I'm aware that  
14                  they issued one for a specific  
15                  distribution center.

16                  QUESTIONS BY MS. MCCLURE:

17                  Q.           For the Orlando distribution  
18                  center?

19                  A.           Yes.

20                  (Mapes Exhibit 12 marked for  
21                  identification.)

22                  QUESTIONS BY MS. MCCLURE:

23                  Q.           Go ahead and mark this document  
24                  as Mapes 12.

25                  A.           Okay. I've read it.

1 Q. Did you have any involvement in  
2 DEA work leading up to the issuance of this  
3 document that is Mapes 12?

4 MR. BENNETT: Objection.

5 Scope.

6 You can answer that question  
7 yes or no only.

8 THE WITNESS: No, I did not.

9 QUESTIONS BY MS. MCCLURE:

10 Q. Have you seen this document  
11 before?

12 A. No, I haven't.

13 Q. But you were aware of its  
14 existence prior to me telling you this today?

15 A. Yes.

16 Q. And you're familiar with the  
17 concepts of DEA's use of order to show cause  
18 and immediate suspension orders?

19 A. I am.

20 Q. And so was the effect of this  
21 order to halt AmerisourceBergen Drug  
22 Corporation's ability to fill any orders for  
23 controlled substances out of the Orlando  
24 distribution center?

25 MR. BENNETT: You can answer.

1                    You can answer, I'm sorry.

2                    THE WITNESS: Yes.

3                    (Mapes Exhibit 13 marked for  
4                    identification.)

5                    QUESTIONS BY MS. MCCLURE:

6                    Q.         Mark a document -- keep both  
7                    that out and this, if you would.

8                    This is 13, which is  
9                    ABDCMDL00398334, and the prior document,  
10                  which was Mapes 12 is ABDCMDL00269383.

11                  Take a look at that and let me  
12                  know when you've had a chance to review it.

13                  A.         I've reviewed it.

14                  Q.         And have you seen this document  
15                  before?

16                  A.         No, I have not.

17                  Q.         Were you aware of this document  
18                  prior to today, even if you've not seen the  
19                  actual document?

20                  A.         Yes.

21                  Q.         Okay. So this order of special  
22                  dispensation is dated April 27, 2007, on the  
23                  last page, right?

24                  A.         Yes.

25                  Q.         And it indicates on the first

1 page that the immediate suspension order,  
2 which is Mapes 12, had been served on  
3 April 24th, right?

4 A. Yes.

5 Q. So three days after the  
6 original immediate suspension order was  
7 issued, this order of special dispensation,  
8 which is Mapes 13, was signed by DEA,  
9 correct?

10 A. Yes.

11 Q. And that order of special  
12 dispensation permitted AmerisourceBergen Drug  
13 Corporation to fill orders for controlled  
14 substances out of the Orlando facility for a  
15 specific set of customers, namely hospitals,  
16 clinics, the Department of Defense,  
17 pharmacies within hospitals, clinics or  
18 Department of Defense facilities, and the  
19 facilities of PMSI, PharMerica and Kindred  
20 Health Care and their subsidiaries, correct?

21 A. Yes.

22 Q. And do you have an  
23 understanding as to why this order of special  
24 dispensation happened three days after the  
25 immediate suspension order?

1                   A.         No, I wasn't involved in that  
2 process.

3                   Q.         Okay. What involvement did you  
4 have in connection with this order to show  
5 cause?

6                   MR. BENNETT: Objection.  
7 Scope.

8                   You are not allowed to disclose  
9 any nonpublic information regarding  
10 enforcement actions taken by DEA or  
11 any nonpublic information regarding  
12 your investigations or activities at  
13 DEA.

14                  To the extent that there is  
15 publicly disclosed facts about what  
16 role you played in any investigation  
17 that resulted in these documents, you  
18 may answer.

19                  MS. MCCLURE: In response to  
20 that instruction, I am going to  
21 withdraw that question, introduce  
22 another document and come back to it.

23                  (Mapes Exhibit 14 marked for  
24 identification.)

25

1       QUESTIONS BY MS. MCCLURE:

2           Q.        This is going to be marked as  
3       Mapes 14.

4                   MS. MCCLURE: And, James, while  
5                   Mr. Mapes is reviewing Mapes 14, I  
6                   will direct your attention to  
7                   paragraph 6 under Section 3 of the  
8                   agreement on page 6, which provides  
9                   "AmerisourceBergen and the DEA may  
10                  each disclose the existence of this  
11                  agreement and information about this  
12                  agreement to the public without  
13                  restriction."

14                  Moreover, Mr. Mapes' Touhy  
15                  letter permits him to provide  
16                  information regarding his personal  
17                  recollection regarding DEA's  
18                  interpretation and enforcement of and  
19                  practices related to the CSA and its  
20                  implementing regulations.

21                  So I will just note that and  
22                  ask you to take a look at those.

23                  MR. BENNETT: Okay. I  
24                  understand your comment about the  
25                  settlement agreement "the DEA may

1           disclose" doesn't necessarily mean  
2           that a former employee has been  
3           authorized to disclose that on behalf  
4           of DEA.

5                 And in addition, I would note  
6           that even with the authorization that  
7           you're -- that you reference, which  
8           was number 8, it does say in number 7  
9           his personal recollection of any  
10          information publicly disclosed by the  
11          United States regarding enforcement  
12          actions taken by DEA.

13               And I will also note in A it  
14          says he is not authorized to disclose,  
15          irrespective of the above  
16          authorizations, any information  
17          regarding any specific DEA  
18          investigations or activities.

19               And so I don't know what your  
20          questions are going to be, and to the  
21          extent that this agreement has been  
22          disclosed and other information has  
23          been disclosed, he is authorized to  
24          talk about that.

25               To the extent that he may --

1                   and I don't know the answer to this,  
2                   but to the extent that he may have  
3                   been involved in investigation before  
4                   these orders were issued and that  
5                   information has never been made public  
6                   to your clients or to the public, he  
7                   is not authorized to disclose what he  
8                   did as an investigation that led up to  
9                   this.

10                  THE WITNESS: Okay. I reviewed  
11                  it.

12                  QUESTIONS BY MS. MCCLURE:

13                  Q.         Okay. Let's address one --  
14                  let's address Mr. Bennett's concern first.

15                  Did you have any personal  
16                  involvement in the investigation that led to  
17                  the issuance of the -- what we've marked as  
18                  Mapes 12?

19                  MR. BENNETT: You may answer  
20                  that question yes or no only.

21                  QUESTIONS BY MS. MCCLURE:

22                  Q.         And the question is the time  
23                  leading up to it, so prior to April 19, 2007.

24                  A.         Yes.

25                  Q.         But you said that you did not

1 have any involvement in the order of special  
2 dispensation which we've marked as Mapes 13?

3 MR. BENNETT: Objection.

4 Mischaracterizes past testimony.

5 QUESTIONS BY MS. MCCLURE:

6 Q. And if that's not correct,  
7 please correct me.

8 A. I had not seen that document  
9 prior to today.

10 Q. But you did have involvement in  
11 events or discussions that led up to the  
12 issuance of the order of special dispensation  
13 marked as Mapes 13?

14 A. No.

15 MR. BENNETT: You may -- okay.

16 QUESTIONS BY MS. MCCLURE:

17 Q. Okay. Let me just be -- so no  
18 involvement in Mapes 13 leading up to it?

19 A. That's correct.

20 Q. Okay. After DEA issued  
21 Mapes 12, the order to show cause, did the  
22 DEA work with AmerisourceBergen to evaluate  
23 and develop a new suspicious order monitoring  
24 program?

25 A. Can you repeat that question,

1 please?

2 Q. After DEA issued what we've  
3 marked as Mapes 12, which is the order to  
4 show cause and immediate suspension of  
5 registration, did the DEA work with  
6 AmerisourceBergen to evaluate and develop a  
7 new suspicious order monitoring program?

8 MR. BENNETT: Objection.

9 Vague.

10 You can answer it.

11 THE WITNESS: No,  
12 AmerisourceBergen created a new  
13 program that we reviewed after they  
14 created it.

15 QUESTIONS BY MS. MCCLURE:

16 Q. When you say "we reviewed after  
17 they created it," was that something that you  
18 were personally involved with, that review?

19 A. Yes.

20 Q. So AmerisourceBergen created a  
21 new program in response to this order to show  
22 cause, and then DEA reviewed that newly  
23 designed program.

24 Do I have that correct?

25 A. Yes.

1 Q. And you were involved from DEA?

2 A. Yes.

3 Q. Who else from DEA was involved  
4 in the review of AmerisourceBergen's program  
5 that was developed in this April, May 2007  
6 time period?

7 MR. BENNETT: You can answer.

8 THE WITNESS: I think I need to  
9 discuss that with these folks.

10 MR. BENNETT: Can we go off the  
11 record?

12 VIDEOGRAPHER: Going off  
13 record. The time is 2:29.

14 (Off the record at 2:29 p.m.)

15 VIDEOGRAPHER: Going back on  
16 record. Beginning of Media File 7.  
17 Time 2:31.

18 MR. BENNETT: Counsel, I've had  
19 an opportunity to discuss off the  
20 record with the witness, and I have  
21 explained to the witness that he is  
22 authorized to answer your last  
23 question, which was to identify the  
24 people at DEA involved in the review.

25 I have indicated to him that he

1                   is not authorized to disclose what  
2                   might have been specifically said that  
3                   was an internal deliberation or was  
4                   guidance from General Counsel's  
5                   office.

6                   And with that, he's authorized  
7                   to answer the last question that you  
8                   asked.

9                   Do you need the last question  
10                  read back?

11                  THE WITNESS: No, I'm good.

12                  MS. MCCLURE: Okay.

13                  THE WITNESS: I reviewed it,  
14                  along with Kyle Wright and Larry Cody  
15                  from the Office of Chief Counsel.

16    QUESTIONS BY MS. MCCLURE:

17                  Q.         And when you say "I reviewed  
18                  it," the "it" you're referring to is the  
19                  changed program that AmerisourceBergen had  
20                  developed, correct?

21                  A.         Yes.

22                  Q.         And after you, Kyle Wright and  
23                  Larry Cody reviewed that new program is when  
24                  the document that I've marked as Mapes 14,  
25                  settlement and release agreement, was

1       executed by DEA and AmerisourceBergen Drug  
2       Corporation on June 22, 2007; is that  
3       correct?

4           A.       Yes, it is.

5           Q.       In between April 24, 2007, when  
6       the order to show cause was served, and  
7       June 22, 2007, when the settlement and  
8       release agreement was signed, you worked with  
9       AmerisourceBergen personnel who were  
10      developing that program, correct?

11                  MR. BENNETT: Objection.

12                  Vague.

13                  THE WITNESS: I reviewed the  
14       work product that they created and  
15       gave comments, but didn't work  
16       directly with them as they were  
17       developing it.

18    QUESTIONS BY MS. MCCLURE:

19           Q.       And then they would take your  
20       comments and incorporate them into the  
21       program that they were working on; is that  
22       correct?

23           A.       Yes.

24           Q.       So it was not one time that you  
25       reviewed something related to this changed

1 program, but instead you would review it,  
2 give comments, they would be incorporated,  
3 you would review again.

4 Is that an accurate assessment?

5 MR. BENNETT: Objection.

6 Vague. Compound.

7 THE WITNESS: It was more along  
8 the lines of them having a specific  
9 question that was a part of the  
10 changes.

11 They would call with a specific  
12 question, we'd discuss it, and then  
13 they would go back and work on it with  
14 another specific question, that kind  
15 of thing, rather than reviewing an  
16 entire document.

17 QUESTIONS BY MS. MCCLURE:

18 Q. Okay. So it was -- pieces of  
19 it along the way would be presented to you  
20 for review and comment, and then maybe the  
21 next day or a few days later they would reach  
22 out again with some other related question.

23 Is that a fair assessment of  
24 that time period?

25 MR. BENNETT: Objection.

1 Vague.

2 THE WITNESS: Yes.

3 QUESTIONS BY MS. MCCLURE:

4 Q. And do you recall whether that  
5 work was primarily in April and May of 2007?

6 A. I don't recall exactly when  
7 these things happened, no.

8 Q. Okay. So you've talked about  
9 some phone calls that you would have with  
10 AmerisourceBergen personnel.

11 Did you also have, you,  
12 personally, have in-person meetings that you  
13 attended about this changed program?

14 And I'm specifically talking  
15 about the time period between April 24th of  
16 '07, and the signing of the settlement and  
17 release agreement on June 22, 2007.

18 A. There were meetings to discuss  
19 the settlement agreement that included  
20 discussions about the suspicious order  
21 monitoring.

22 Q. Where were those meetings  
23 physically?

24 A. I'm not sure. I do recall one  
25 that was at the AmerisourceBergen

1 headquarters. I'm not sure if there was  
2 others or not.

3 Q. We've talked about DEA  
4 personnel who were involved.

5 Who do you recall being  
6 involved in the work on this changed program  
7 from the AmerisourceBergen Drug Corporation  
8 side?

9 A. I don't recall who it was.

10 Q. You don't recall anyone from  
11 AmerisourceBergen Drug Corporation that was  
12 involved in the development of that changed  
13 program over that two months?

14 A. It would be a guess at this  
15 point. I just don't recall it.

16 (Mapes Exhibit 15 marked for  
17 identification.)

18 QUESTIONS BY MS. MCCLURE:

19 Q. Show you a document that's  
20 marked 15. For the record, ABDCMDL00316083.

21 This is a series of e-mails  
22 that I'm not intending to ask you specific  
23 questions about except to the extent as to  
24 whether they refresh your recollection  
25 regarding who from AmerisourceBergen Drug

1      Corporation was involved in development of  
2      the new program that you worked with.

3                A.        Okay. I've reviewed it.

4                Q.        And does Exhibit 15 refresh  
5      your recollection as to who from  
6      AmerisourceBergen was involved with the  
7      design of the changed program in the April,  
8      May, June 2007 time period?

9                A.        Could you repeat the initial  
10     question?

11               Q.        You mean the question I just  
12     asked as to who was involved with the --

13                       Who do you recall being  
14     involved with the changed program that  
15     AmerisourceBergen was working with and that  
16     you reviewed in that April, May, June 2007  
17     time period from AmerisourceBergen?

18                A.        I was thinking the initial  
19     question had to do with who was at specific  
20     meetings that we had with Amerisource instead  
21     of general involvement.

22                Q.        Okay. Let's start with general  
23     involvement.

24                       Who from AmerisourceBergen do  
25     you generally recall being involved with the

1 creation of the changed program in April, May  
2 and June of 2007?

3 A. The person that I dealt with  
4 most on that was Steve Mays.

5 Q. Okay. Anyone else you  
6 recollect?

7 A. I can see e-mails related to  
8 that from Eric Triveni and others that I  
9 don't really recall.

10 Q. So your primary recollection is  
11 Steve Mays?

12 A. Yes.

13 Q. And so it sounds like the  
14 communications between you and  
15 AmerisourceBergen during this time period  
16 involved phone calls, e-mails, as we've just  
17 seen in Mays 15 {sic}, as well as some  
18 in-person meetings; is that correct?

19 A. Yes, it is.

20 Q. But you don't recall the number  
21 of in-person meetings that you attended  
22 regarding the changed program?

23 A. No, I don't.

24 Q. One feature of the changed  
25 program was that AmerisourceBergen would now

1 hold orders flagged by a computer program and  
2 investigate them as to whether they were  
3 suspicious or not and only ship the orders  
4 that AmerisourceBergen determined were not  
5 suspicious; is that correct?

6 A. That's my understanding, yes.

7 Q. And is it your understanding  
8 that that was a significant change in the  
9 industry that was undertaken in 2007?

10 MR. BENNETT: Objection.

11 Vague.

12 You can answer.

13 THE WITNESS: Yes, that was a  
14 change.

15 QUESTIONS BY MS. MCCLURE:

16 Q. Do you recall in connection  
17 with this review also reviewing  
18 AmerisourceBergen's due diligence procedures  
19 and files?

20 A. I don't specifically recall  
21 that, no.

22 Q. Do you recall working with  
23 AmerisourceBergen during this time period on  
24 thresholds?

25 A. No, I don't.

1                   Q.         Do you recall working with  
2     AmerisourceBergen on a new customer due  
3     diligence questionnaire in this time period?

4                   A.         No.

5                   Q.         The settlement agreement, if we  
6     turn to Mapes 14, on page 3, in  
7     Subsection 2C. Tell me when you're there.

8                   A.         I'm there.

9                   Q.         The settlement agreement called  
10    for -- or required -- okay. Let me back up.

11                  This Section 2 is called  
12    "Obligations of DEA," correct?

13                  A.         It is.

14                  Q.         And Section C provides that  
15    "the DEA shall conduct reviews of the  
16    functionality of AmerisourceBergen's  
17    diversion compliance program, parentheses,  
18    compliance reviews, end parentheses, at up to  
19    five distribution centers of  
20    AmerisourceBergen."

21                  And then it lists them out,  
22    correct?

23                  A.         Yes.

24                  Q.         Were you involved in the  
25    functionality compliance reviews conducted

1       between June 22, 2007, and the August 24,  
2       2007 date set forth in this settlement  
3       agreement?

4           A.       My memory is that I was  
5       involved in two of them.

6           Q.       So of the five facilities or  
7       distribution centers, you attended the  
8       functionality compliance reviews at two of  
9       them?

10          A.       Yes.

11          Q.       Do you recall which two?

12          A.       Williamston, Michigan, and  
13       Columbus, Ohio.

14          Q.       And Columbus is not listed  
15       there because there was an avenue to just  
16       have DEA select two facilities, correct?

17          A.       Yes.

18          Q.       And so Columbus -- the Columbus  
19       distribution center was one that DEA selected  
20       for these compliance functionality reviews?

21          A.       Yes.

22          Q.       Do you recall who attended the  
23       compliance functionality reviews at Orlando,  
24       Sugar Land and the fifth distribution center  
25       that DEA selected?

1           A.       I do not.

2           Q.       How long were the functionality  
3 compliance reviews that you attended in  
4 Williamston and Columbus?

5           A.       Most of the day at each of  
6 them.

7           Q.       And what was the purpose that  
8 you understood you were fulfilling when you  
9 conducted these functionality compliance  
10 reviews?

11          A.       To determine if the  
12 distribution centers were following the new  
13 procedures that Amerisource had concerning  
14 compliance.

15          Q.       What activities do you recall  
16 performing in connection with those  
17 compliance functionality reviews?

18                    MR. BENNETT: Objection.

19                    Objection. Scope.

20                    To the extent that this would  
21 reveal investigative or intelligence  
22 gathering and dissemination techniques  
23 whose effectiveness would be impaired  
24 by disclosing, you may not disclose  
25 your activities.

1                                  To the extent that it does not,  
2                                  you may answer the question.

3                                  THE WITNESS: Okay. And the  
4                                  answer is, I don't remember  
5                                  specifically what we did at the  
6                                  locations.

7                                  QUESTIONS BY MS. MCCLURE:

8                                  Q.         Okay. Do you remember who else  
9                                  from DEA -- I understand you don't recall who  
10                                 did the other specific functionality  
11                                 reviews -- scratch that. Back up.

12                                 Moving along further in that  
13                                 paragraph it says, "DEA shall also review the  
14                                 investigatory files of the customers serviced  
15                                 by the distribution centers subject to the  
16                                 compliance reviews that are maintained by  
17                                 AmerisourceBergen's corporate security and  
18                                 regulatory affairs department in  
19                                 Chesterbrook, Pennsylvania."

20                                 Do you see that language?

21                                 A.         Yes, I do.

22                                 Q.         Do you recall being involved in  
23                                 the review of the customer files at  
24                                 Chesterbrook?

25                                 A.         No, I don't.

1                   Q.         Was it your understanding that  
2     AmerisourceBergen Drug Corporation's license  
3     for the Orlando facility was returned and  
4     AmerisourceBergen was permitted to fulfill  
5     customer controlled substances orders out of  
6     the Orlando facility after the execution of  
7     the settlement agreement?

8                   A.         If by "license" you're  
9     referring to the DEA registration, yes.

10                  Q.         Thank you.

11                  And so is it fair to conclude  
12     that the compliance functionality reviews  
13     confirmed that the distribution centers were,  
14     in fact, following the new procedures that  
15     AmerisourceBergen had regarding compliance?

16                  A.         Yes.

17                  Q.         Okay. You can set those  
18     documents aside.

19                  After you reviewed the new  
20     changed program that AmerisourceBergen had  
21     developed, you attended a DEA-sponsored  
22     pharmaceutical industry conference in  
23     Houston, Texas, in September of 2007.

24                  Do you recall that?

25                  A.         Yes, I do.

1 Q. And that was a DEA diversion  
2 control division-sponsored conference,  
3 correct?

4 A. It was.

5 Q. And you invited Chris Zimmerman  
6 to present with you at this conference,  
7 right?

8 A. Someone did, yes.

9 Q. It was not you personally?

10 A. No.

11 Q. Did you have an understanding  
12 that Chris Zimmerman was asked to present at  
13 this conference because you and DEA thought  
14 that AmerisourceBergen's new system, the  
15 changed system, was appropriate and would be  
16 good to share with others in the industry?

17 MR. BENNETT: Objection.

18 Scope.

19 You are not a 30(b)(6) witness  
20 authorized to testify on behalf of  
21 what DEA thought. You may answer with  
22 respect to what you thought personally  
23 while you were at DEA.

24 THE WITNESS: Yes, that was my  
25 understanding of why he was asked to

1                   be part of that.

2        QUESTIONS BY MS. MCCLURE:

3                   Q.         And so I wasn't there, but it  
4        sounds like you and Mr. Zimmerman were both  
5        up on stage together presenting ABDC's  
6        changed program to industry at a DEA  
7        conference.

8                   Do I have that correct?

9                   A.         Yes.

10                  (Mapes Exhibit 16 marked for  
11                  identification.)

12        QUESTIONS BY MS. MCCLURE:

13                  Q.         Show you a document marked 16.  
14                  Now, Mr. Mapes, you are, of  
15        course, free to review the entire document.  
16        The section that I will be asking you about  
17        is on the second page under a header called  
18        "Suspicious Orders."

19                  A.         I've reviewed it.

20                  Q.         In the second paragraph under  
21        Suspicious Orders, it says, "Mr. Zimmerman  
22        stressed the importance of knowing your  
23        customer and providing due diligence  
24        investigation on all new retail and wholesale  
25        accounts with the exception of retail chain

1 pharmacies."

2 Do you see that language there?

3 A. I do.

4 Q. Can you explain the exception  
5 for retail chain pharmacies?

6 A. No, I didn't discuss that  
7 particular exception with him, so I don't  
8 know why he included that.

9 Q. Did you review Mr. Zimmerman's  
10 PowerPoint prior to co-presenting with him at  
11 this DEA-sponsored industry conference?

12 A. I'm not sure he had a  
13 PowerPoint.

14 (Mapes Exhibit 17 marked for  
15 identification.)

16 QUESTIONS BY MS. MCCLURE:

17 Q. Show you a document that is  
18 marked Mapes 17.

19 A. I've reviewed this.

20 Q. So does this refresh your  
21 recollection that Chris Zimmerman had a  
22 PowerPoint that he presented at the  
23 September 11, 2007 industry conference?

24 A. No, I still don't remember the  
25 presentation details.

1 Q. Okay. I'm not asking if you  
2 remember the presentation details. I'm just  
3 asking if you recall that Chris Zimmerman  
4 stood on stage with you and made a  
5 presentation and that it had a PowerPoint  
6 attached in connection with it.

7 A. We were both --

8 MR. BENNETT: Objection.

## 9 Compound.

You can answer.

14 QUESTIONS BY MS. MCCLURE:

15 Q. Okay. Was there anyone else  
16 from DEA who presented on this changed  
17 AmerisourceBergen program along with  
18 Mr. Zimmerman, or was it only you?

19                   A.         It was just Mr. Zimmerman and  
20       myself.

21 Q. Do you recall referring to this  
22 changed program as the new industry standard?

23 A. No, I don't recall that.

24 Q. Do you believe that -- was it  
25 your understanding that it was expected by

1 DEA, to your understanding, to serve as a new  
2 standard?

3 MR. BENNETT: Objection.

4 Scope.

5 You're not authorized as a  
6 30(b)(6) witness to speak on behalf of  
7 DEA. You may answer based on your  
8 personal understanding at the time.

15 QUESTIONS BY MS. MCCLURE:

16 Q. And was compliant with the  
17 Controlled Substances Act?

18 A. Yes.

19 Q. And was being carried out in  
20 connection with the program that you had  
21 reviewed based on your personal, on-site  
22 reviews of those distribution centers?

23 A. Yes.

24 Q. If you turn to page 9 of  
25 whatever this PowerPoint exhibit is --

1 MR. BENNETT: Mapes 17.

2 MS. MCCLURE: Thank you. Yes,

3 Mapes 17.

4 QUESTIONS BY MS. MCCLURE:

5 Q. -- which has little Bates  
6 numbers on it that end in 1786.

7 It says, "Historically,  
8 controlled substance" -- I'm looking at the  
9 second and third bullet -- "slash, listed  
10 chemical order monitoring has been based on a  
11 ship and report process."

12 And the next bullet, "ABC's OMP  
13 process is now based on identify, capture,  
14 investigate and report suspicious orders, all  
15 prior to shipment."

16 Do you see that language?

17 A. Yes, I do.

18 Q. And was it your understanding  
19 that this was one of the new features of the  
20 changed program that AmerisourceBergen had  
21 developed?

22 A. Yes.

23 Q. And this was new not just to  
24 AmerisourceBergen but to the wholesale  
25 industry?

1 MR. BENNETT: Objection.

2 Vague. Foundation.

3 QUESTIONS BY MS. MCCLURE:

4 Q. Distributor industry.

5 MS. MCCLURE: He can answer the  
6 question, right? He was waiting --

7 MR. BENNETT: Oh, yeah.

8 So, objection. Vague.

9 Objection. Foundation.

10 You may answer.

11 THE WITNESS: Yes, this was a  
12 change for the wholesale industry.

13 QUESTIONS BY MS. MCCLURE:

14 Q. Mr. Mapes, after you retired  
15 from DEA in 2007, you began consulting, as we  
16 discussed much earlier in today's deposition?

17 A. Yes.

18 Q. And one of those companies that  
19 you performed some consulting work for was  
20 AmerisourceBergen Drug Corporation, correct?

21 A. That's correct.

22 Q. When did you first start  
23 consulting for AmerisourceBergen Drug  
24 Corporation?

25 A. In early 2008.

1 Q. And are you still consulting  
2 for them?

3 A. No, I'm not.

4 Q. When did you stop consulting  
5 for ABDC?

6 A. Around 2014, 2015.

7 Q. And why was that?

8 A. Because I was spending a lot of  
9 time with the pharmacy that I was working  
10 with and didn't have time to do both  
11 adequately.

12 Q. And the work you performed for  
13 ABDC, did that include advising on compliance  
14 with DEA regulations and policies?

15 A. It did.

16 Q. Did that include discussing  
17 issues that might come up about DEA's  
18 interpretation of the regulations?

19 A. Yes.

20 Q. And did it include actual  
21 on-site visits to pharmacies to assist with  
22 due diligence, whether it's new customer or  
23 ongoing customer due diligence?

24 A. It did.

25 Q. Did you also -- sorry, strike

1       that.

2                          Do you recall actually visiting  
3                          pharmacies on behalf of ABDC?

4                          A.         Yes.

5                          Q.         Do you recall how often?

6                          A.         Generally it would be two or  
7                          three times a year for a week, but seeing  
8                          several pharmacies in that week's time in a  
9                          part of the country.

10                         Q.         What kind of activities would  
11                         you perform at the pharmacy?

12                         A.         Looking at the pharmacies,  
13                         seeing what kind of customers they had, what  
14                         kind of drugs they were selling, the  
15                         relationship between the pharmacy and the  
16                         physicians, discussing issues with the  
17                         pharmacist.

18                         Q.         Did anyone from ABDC accompany  
19                         you on these visits to pharmacies?

20                         A.         Yes, every time.

21                         Q.         And do you know whether ABDC  
22                         was also performing other on-site visits at  
23                         pharmacies that you were not personally  
24                         involved with?

25                         A.         Yes, they were.

1                   Q.         Did you also perform audits of  
2                   AmerisourceBergen Drug Corporation's  
3                   suspicious order monitoring program?

4                   A.         Yes, I did.

5                   Q.         How many times did you audit  
6                   the order monitoring program?

7                   A.         Annually for five or six years.

8                   Q.         And do you recall concluding  
9                   that ABDC's suspicious order monitoring  
10                  program for those audits that you conducted  
11                  was in compliance with the Controlled  
12                  Substances Act?

13                  A.         That's not the review that I  
14                  was conducting.

15                  Q.         Tell me about the review that  
16                  you were conducting.

17                  A.         I was looking at it to  
18                  determine if it was in compliance with the  
19                  ABC policies and procedures.

20                  Q.         Okay. And those ABC policies  
21                  and procedures were the policies and  
22                  procedures that were developed in connection  
23                  with the changed program in 2007, correct?

24                  A.         In conjunction with that and  
25                  changes that were made subsequent to that.

1                   Q.         Okay. So it would have been  
2                   the policies and procedures that were enacted  
3                   that you would have reviewed back in 2007  
4                   during your time at DEA, as well as any  
5                   updates or improvements that had been made to  
6                   them subsequent?

7                   A.         Yes.

8                   Q.         And did you determine that ABDC  
9                   was in compliance with its policies and  
10                  procedures for these annual audits?

11                  A.         There were generally issues to  
12                  discuss, improvements to be made, but  
13                  generally in compliance, yes.

14                  Q.         Going back to excessive  
15                  purchase reports.

16                           DEA's acceptance of excessive  
17                  purchase reports changed at some point,  
18                  correct?

19                           MR. BENNETT: Objection.

20                           Scope.

21                           You're not authorized to speak  
22                  on behalf of DEA. You may speak on  
23                  your personal knowledge of what you  
24                  observed while working at DEA.

25                           THE WITNESS: The nature of the

1                   reports that I was involved with that  
2                   were accepted did change, yes.

3                   QUESTIONS BY MS. MCCLURE:

4                   Q.           And what was the change?

5                   A.           It was change from a report  
6                   that was called an excessive purchase report  
7                   after the fact to a report that was of  
8                   specific suspicious orders before they were  
9                   shipped.

10                  Q.           And that's the change that  
11                  we've talked about that AmerisourceBergen had  
12                  in the April, May, June 2007 time period that  
13                  you reviewed, correct?

14                  A.           Yes.

15                  Q.           Were you aware of any industry  
16                  participants making that change prior to that  
17                  program that you reviewed in April, May and  
18                  June of 2007?

19                  A.           I don't recall the exact dates  
20                  when other companies were making the changes,  
21                  but it was a change that happened routinely  
22                  after we had the Distributor Initiative  
23                  meeting with companies.

24                  Q.           And was this -- do you know if  
25                  this was viewed by industry, based on your

1 knowledge, as a significant change or a minor  
2 one?

3 A. I don't know how they viewed  
4 it.

5 Q. No one ever said anything to  
6 you about that?

7 A. No.

8 Q. Was there any rulemaking put  
9 into effect regarding this change?

10 Do you know what I mean by  
11 rulemaking?

12 A. Yeah. Notice and comment  
13 rulemaking, no, there wasn't.

14 MS. MCCLURE: So we know who  
15 put us on hold, and it's Napoli.

16 Hunter. I recall Hunter.

17 So I think we're going to need  
18 to hang this up.

19 So anyone who's on the phone  
20 who can hear us, we're going to --

21 So I think we need -- so we're  
22 going to go off the record.

23 VIDEOGRAPHER: Okay. Going off  
24 record. The time is 3:13.

25 (Off the record at 3:13 p.m.)

1                           VIDEOGRAPHER: We're going back  
2                           on the record. Beginning of Media  
3                           File 8. The time is 3:26.

4 MS. MCCLURE: So thank you,  
5 Mr. Mapes. I'm going to at this point  
6 turn the defense questioning over to  
7 Ms. Wicht on behalf of Cardinal. I  
8 appreciate you, again, being here  
9 today. And subject to my redirect  
10 anticipated for tomorrow, I will turn  
11 over questioning.

12 EXAMINATION

13 QUESTIONS BY MS. WICHT:

14 Q. Good afternoon, Mr. Mapes.

15 A. Good afternoon.

16 Q. As Shannon just said, I'm

17 Jennifer Wicht, and I represent Cardinal  
18 Health.

19                           And you -- as you indicated  
20 before, you and I have met previously on one  
21 occasion, correct?

22 A. Correct.

23 Q. Okay. I have just basically  
24 some follow-up questions. I'm going to come  
25 back to some areas that you spoke about

1 already with Ms. McClure generally and just  
2 ask a few more questions on them.

3 So what I will do generally at  
4 the beginning is try to just orient you about  
5 the subject that I'm going to back to, so  
6 I'll refer to the testimony that you gave  
7 earlier today. But certainly if I, in doing  
8 that, I say something that's incorrect and is  
9 not what you said earlier today, I ask you to  
10 please correct me when I do that.

11 Okay?

12 A. Okay.

13 Q. Thank you.

14 Okay. So earlier today you  
15 testified that during your tenure at the DEA  
16 you would have periodic conversations with  
17 registrants about their suspicious order  
18 monitoring systems, correct?

19 A. Yes.

20 Q. And I think you said that from  
21 time to time you would speak with people and  
22 they would ask you for advice or input about  
23 some particular feature of their suspicious  
24 order monitoring system.

25 Do I have that correct?

1                   A.         Yes.

2                   Q.         Okay. And when you had those  
3 conversations with registrants, did you  
4 attempt to provide them with guidance about  
5 their systems?

6                   A.         More than guidance about their  
7 system. Just answering the specific question  
8 that they had.

9                   Q.         Okay. You were --

10                  MR. BENNETT: I'm not sure the  
11 realtime is rolling. At least our  
12 screen isn't working. I don't know if  
13 others are having the same problem.

14 QUESTIONS BY MS. WICHT:

15                  Q.         Okay. Thank you. I had to  
16 look back and see the answer that you had  
17 given because I got distracted there.

18                  So you were answering questions  
19 about -- from registrants about their  
20 suspicious order monitoring systems; is that  
21 fair?

22                  A.         Yes.

23                  Q.         And when you had those  
24 conversations where you would answer  
25 questions, were you attempting to help

1 registrants meet their regulatory  
2 obligations?

3 A. Yes.

4 Q. And when you had those  
5 conversations with registrants, were you  
6 honest in the advice that you provided to  
7 them about their suspicious order monitoring  
8 systems?

9 A. Yes.

10 Q. And did you believe that  
11 registrants could rely on the information  
12 that you provided in those conversations that  
13 you had with them about their suspicious  
14 order monitoring systems?

15 A. Yes.

16 Q. And were you aware -- strike  
17 that.

18 At the point in time in your  
19 tenure at DEA when you were supervising other  
20 diversion investigators, were you aware of  
21 whether those individuals were having  
22 conversations with registrants about their  
23 suspicious order monitoring systems of a  
24 similar nature to what you've described?

25 MR. BENNETT: Objection.

1                   Vague.

2                   THE WITNESS: Not necessarily,  
3                   no.

4    QUESTIONS BY MS. WICHT:

5                   Q.         Do you know -- you don't know  
6         one way or another whether they were or they  
7         were not having those conversations?

8                   A.         That's correct.

9                   Q.         Okay. You were Kyle Wright's  
10      supervisor for a period of time at DEA,  
11      correct?

12         A.         Yes.

13         Q.         Do you have any knowledge or  
14         recollection as to whether Mr. Wright  
15         specifically had conversations with  
16         registrants where he provided -- where he  
17         answered questions about suspicious order  
18         monitoring systems?

19         A.         No, I don't.

20         Q.         Okay. Would you expect that if  
21         a representative of DEA was having a  
22         conversation with a registrant to answer  
23         their questions about suspicious order  
24         monitoring systems, that the DEA employee  
25         would be honest in their conversations with

1 the registrant?

2 A. Yeah, I would expect so.

3 Q. And would you expect that the  
4 registrant would be able to rely on the  
5 information that was provided by the DEA  
6 employee in those conversations?

7 A. Yes.

8 Q. Okay. I'm going to change  
9 topics a little bit here.

10 Another thing that you  
11 described in your testimony earlier today was  
12 a change in DEA's expectation of how  
13 suspicious order reporting should be done.

14 Do you recall that?

15 MR. BENNETT: Objection.

16 Mischaracterizes testimony. This  
17 witness did not speak for DEA's  
18 expectation.

19 QUESTIONS BY MS. WICHT:

20 Q. I'll rephrase the question in  
21 light of the objection.

22 Earlier in your testimony  
23 today, you described a change in your  
24 expectation or understanding of how  
25 wholesalers would conduct suspicious order

1 monitoring and reporting, correct?

2 A. Yes.

3 Q. And that was -- you were just  
4 recently testifying about that in connection  
5 with the presentation that you did with ABDC  
6 at the diversion conference in the fall  
7 of 2007, correct?

8 A. Yes.

9 Q. Okay. And I think you said,  
10 but please correct me if I'm wrong, that you  
11 were aware that the expectation -- or you  
12 were -- excuse me, strike that. Let me start  
13 again.

14 You were aware that the system  
15 that ABDC was presenting at the conference  
16 represented a change in how wholesalers were  
17 conducting suspicious order monitoring and  
18 reporting; is that correct?

19 A. It is.

20 Q. Okay. And when -- but there  
21 was no change in the regulation, correct?

22 A. That's correct.

23 Q. So is it fair to say that the  
24 change was in what DEA -- how DEA was  
25 expecting wholesalers to comply with the

1 regulation?

2 MR. BENNETT: Objection.

3 Scope.

4 You're not authorized to speak  
5 on behalf of DEA. You may speak upon  
6 your personal knowledge of what was  
7 happening.

8 THE WITNESS: Yes, I did expect  
9 that wholesalers would report  
10 suspicious orders differently than  
11 they had prior to the meetings and  
12 that conference.

13 QUESTIONS BY MS. WICHT:

14 Q. Okay. So when you -- when your  
15 expectations changed about how wholesalers  
16 would report suspicious orders, did you  
17 expect that wholesalers would be able to  
18 change their systems instantaneously, or did  
19 you expect that it would take some time for  
20 them to implement the change to the systems?

21 A. My expectation is that it would  
22 take some time. Not a -- not a year, not six  
23 months, but some time for them to change.

24 Q. Because they were required  
25 to -- they were being asked to prepare and

1 establish effectively a new suspicious order  
2 monitoring system, correct?

3 A. Yes.

4 Q. Okay. I want to come back to  
5 talking about the presentation that you made  
6 with ABDC in the fall of 2007, and I want to  
7 direct your attention back to Exhibit 17, if  
8 you still have that in front of you.

9 A. Yes, I do.

10 Q. Sorry, thank you.

11 So if you would -- if you  
12 would -- and this was a -- I believe you  
13 testified earlier that the presentation was  
14 made by Mr. Zimmerman of ABDC, correct?

15 A. Yes, it was.

16 Q. And you were on the stage with  
17 him at the time that he presented?

18 A. Yes.

19 Q. And if you would turn to Slide  
20 Number 7 in the deck, which has the Bates  
21 number ending 1784?

22 A. Yes.

23 Q. And that's a slide that's  
24 titled "New Customer Due Diligence," correct?

25 A. It is.

1 Q. And do you see that on the  
2 slide deck it says, "Retail chain pharmacies  
3 are exempted from the due diligence  
4 investigations completed on new retail and  
5 wholesale accounts"?

6 A. It does.

7 Q. Do you recall, when this  
8 presentation was delivered, whether anyone  
9 from DEA stated -- stood up and told the  
10 group that DEA didn't agree with that  
11 exemption?

12                   A.           I don't recall if they did or  
13        didn't.

14 (Mapes Exhibit 18 marked for  
15 identification.)

16 QUESTIONS BY MS. WICHT:

17 Q. I've handed you what's been  
18 marked as Exhibit 18, if you want to take a  
19 moment and look at that.

20 And just for the record, this  
21 is a document that's Bates-stamped  
22 HDS MDL 00135664 through 65.

23 MR. LANIER: Do you have a copy  
24 for me, Shannon?

25 MS. WICHT: I'm not Shannon,

1                   but I can get you one.

2                   MR. LANIER: Oh, I'm sorry, I  
3                   don't have my glasses on.

4                   Thank you. Sorry, Jennifer.

5                   MS. WICHT: No problem.

6                   THE WITNESS: Okay.

7    QUESTIONS BY MS. WICHT:

8                   Q.        Have you ever seen this  
9                   document before, Mr. Mapes?

10                  A.        No, I have not.

11                  Q.        Okay. Do you see at the top  
12                  that it's titled as a "Summary of the DEA  
13                  HDMA Meeting on Suspicious Orders"?

14                  A.        Yes.

15                  Q.        And are you familiar with HDMA?

16                  A.        Yes.

17                  Q.        And what is HDMA?

18                  A.        It's an industry association,  
19                  the Healthcare Distribution Management  
20                  Association.

21                  Q.        And do you see that this  
22                  recites a meeting date of September 7, 2007,  
23                  and it lists several DEA attendees, including  
24                  you?

25                  A.        Yes.

1                   Q.         Do you recall meeting with HDMA  
2         on the subject of suspicious orders in  
3         approximately this time frame?

4                   A.         No.

5                   Q.         Okay. If you could turn your  
6         attention to the second page of the document,  
7         please.

8                   A.         (Witness complies.)

9                   Q.         And there's a first sort of  
10       full bullet that appears on that page, and it  
11       says, "DEA also does not want to see --  
12       receive suspicious order reports that merely  
13       reflect volumes that went over a threshold.  
14       They wanted reports that are, quote, true,  
15       close quote, suspicious orders."

16                  Do you see that?

17                  A.         Yes.

18                  Q.         Do you recall ever  
19         communicating that to HDMA?

20                  A.         No, because I really don't  
21         recall the meeting.

22                  Q.         Okay. Do you recall -- leaving  
23         aside whether it was at this particular  
24         meeting, which I understand that you can't  
25         recall, do you recall ever communicating that

1 point that's recited here, that DEA only  
2 wanted to receive suspicious order reports  
3 of, quote, true suspicious orders to  
4 registrants?

5 A. I recall discussing that, but I  
6 don't recall who it was with or when, that  
7 kind of thing.

8 Q. Okay. Fair enough.

9 And what does that mean, to say  
10 that DEA -- well, to your understanding, what  
11 did that mean when you communicated that DEA  
12 wanted to receive reports that were true  
13 suspicious orders, not merely volumes that  
14 went over a threshold?

15 A. That we are looking for reports  
16 that the wholesalers had reviewed, not just  
17 with a raw number of drugs that were ordered  
18 but reviewed it and determined that it was  
19 suspicious.

20 Q. So I think earlier you  
21 described suspicious order reporting as  
22 requiring some element of subjective  
23 judgment; is that right?

24 A. Yes.

25 Q. So this point that DEA wanted

1 reports that are true suspicious orders, is  
2 that conveying that DEA wanted to receive  
3 reports only after the wholesaler had applied  
4 that subjective judgment?

5 MR. BENNETT: Objection.

6 Scope.

7 You're not authorized to speak  
8 on what DEA wanted.

9 You may speak on what you  
10 personally meant when you communicated  
11 that point to registrants.

12 THE WITNESS: Now I don't  
13 remember the question.

14 QUESTIONS BY MS. WICHT:

15 Q. That's what I was just about to  
16 say.

17 So the question was: When you  
18 were communicating to registrants that DEA  
19 wanted to receive true suspicious order  
20 reports, not merely volumes that went over a  
21 threshold, were you conveying that you wanted  
22 to receive reports only after the wholesaler  
23 had applied their subjective judgment to  
24 determine whether the order was truly  
25 suspicious?

1 A. Yes, that's what I was...

2 Q. Okay. If someone asserted that  
3 90 percent of all orders that were shipped  
4 after September of 2007 should have been  
5 reported to DEA as suspicious, would that be  
6 consistent with your expectations as you've  
7 described them today?

8 A. If they said 90 percent of  
9 orders shipped by wholesalers, no, I wouldn't  
10 think that was a number that was close to  
11 those that should be suspicious.

12 Q. I'm going to switch gears again  
13 here for a moment and just talk -- a couple  
14 of questions about excessive purchase  
15 reports.

16 I think you mentioned earlier  
17 today that different registrants may have  
18 provided excessive purchase reports in  
19 different forms; is that right?

20 A. That's correct.

21 Q. And sometimes different  
22 registrants may have called the reports by  
23 different names; is that right?

24 A. Yes.

25 Q. Do you have any recollection

1       about whether Cardinal Health referred to  
2       those reports as ingredient limit reports?

3           A.       I don't recall.

4           Q.       Don't recall one way or the  
5       other?

6           A.       Right.

7           Q.       Fair enough.

8               You testified earlier today  
9       about cyclic audits performed by DEA  
10      investigators of wholesalers' distribution  
11      centers, correct?

12           A.       Yes.

13           Q.       I just have a couple of  
14      follow-up questions about that.

15               At the conclusion of a cyclic  
16      audit, is it correct that the DEA  
17      investigator's report would not be provided  
18      to the registrant?

19           A.       Yes, that's correct.

20           Q.       So is it correct that a  
21      registrant who went through a cyclic audit  
22      and had no discrepancies found, the  
23      registrant would not have a DEA document  
24      reflecting that fact? Is that correct?

25           A.       Unless the registrant requested

1 it through FOI or something like that.

2 Q. So your understanding that  
3 registrants could receive audit reports  
4 through the FOIA process?

5 A. Yes.

6 MS. WICHT: I don't have any  
7 more questions this afternoon, so I'm  
8 going to turn it over to the next  
9 person.

10 Thank you very much, Mr. Mapes.

11 THE WITNESS: Okay.

12 VIDEOGRAPHER: Going off the  
13 record. The time is 3:48.

14 (Off the record at 3:48 p.m.)

15 VIDEOGRAPHER: We're going back  
16 on record. Beginning of Media File 9.  
17 The time is 3:50.

18 EXAMINATION

19 QUESTIONS BY MR. EPPICH:

20 Q. Good afternoon, Mr. Mapes. My  
21 name is Chris Eppich. I represent McKesson  
22 in this litigation.

23 A. Good afternoon.

24 Q. I just have a few questions for  
25 you to follow up on the questions of my

1       colleagues this morning and this afternoon.

2                   It's true that the DEA  
3       registers every pharmacy, distributor and  
4       manufacturer that handles controlled  
5       substances, correct?

6                   A.       Yes.

7                   Q.       And each pharmacy, distributor  
8       and manufacturer must submit an application  
9       for controlled substances to DEA?

10          A.       Yes.

11          Q.       DEA evaluates each application?

12                   MR. BENNETT: Objection.

13                   Scope.

14                   You can answer, if you know.

15                   THE WITNESS: They evaluate  
16       them in different ways depending on  
17       the category of the registrant. A  
18       manufacturer is much more of an  
19       evaluation than a retail pharmacy.

20   QUESTIONS BY MR. EPPICH:

21          Q.       What is the evaluation of a  
22       manufacturer?

23                   MR. BENNETT: Objection.

24                   Scope.

25                   THE WITNESS: It's an on-site

1                   review of their recordkeeping,  
2                   security, quotas, what they're going  
3                   to manufacture, all the -- you know,  
4                   everything from A through Z at the  
5                   manufacturer.

6                   QUESTIONS BY MR. EPPICH:

7                   Q.         Will you describe the  
8                   evaluation of a potential distributor  
9                   registrant?

10                  MR. BENNETT: Objection.  
11                  Scope.

12                  THE WITNESS: It's a review, an  
13                  on-site review, at the location to  
14                  determine if they have the proper  
15                  security, recordkeeping and other such  
16                  things to become a wholesaler.

17                  QUESTIONS BY MR. EPPICH:

18                  Q.         And will you describe the  
19                  evaluation process for a potential pharmacy  
20                  registrant?

21                  MR. BENNETT: Objection.  
22                  Scope.

23                  THE WITNESS: It's basically a  
24                  clerical review to be sure that they  
25                  have the appropriate state license.

1       QUESTIONS BY MR. EPPICH:

2           Q.       Is there an on-site inspection  
3       or review of a potential pharmacy registrant?

4           MR. LANIER: Object to these  
5       questions. The time frame is not put  
6       into them.

7           MR. BENNETT: I object to  
8       scope.

9       QUESTIONS BY MR. EPPICH:

10          Q.       While you were at DEA, sir.

11          A.       It changed while I was at DEA.  
12       For the first several years there was no  
13       on-site review of pharmacies, but after some  
14       point in time in the mid-2005-ish time, there  
15       were some offices that were performing  
16       on-site reviews of pharmacies.

17          Q.       Do you know why that changed?

18           MR. BENNETT: Objection.

19       Scope.

20           You're not authorized to  
21       disclose the internal deliberative  
22       process of the DEA.

23           To the extent that you can  
24       answer this question based on your  
25       personal knowledge without disclosing

1                   internal deliberations, you may  
2                   answer.

3                   THE WITNESS: So I don't really  
4                   know why some divisions did that and  
5                   others didn't.

6                   QUESTIONS BY MR. EPPICH:

7                   Q.         If I could ask you to turn to  
8                   Exhibit 3.

9                   A.         I've got it.

10                  Q.         Look at Section 1301.74(a).  
11                  Are you familiar with  
12                  Section 1301.74(a), sir?

13                  A.         Yes.

14                  Q.         Section 1301.74(a) says,  
15                  "Before distributing a controlled substance  
16                  to any person who the registrant does not  
17                  know to be registered to possess the  
18                  controlled substance, the registrant shall  
19                  make a good faith inquiry either with the  
20                  administration or with the appropriate state  
21                  controlled substances registration agency, if  
22                  any, to determine that the person is  
23                  registered to possess the controlled  
24                  substance."

25                  Do you see that, sir?

1           A.       I do.

2           Q.       So Section 1301.74(a) requires  
3        a registrant to make a good faith inquiry to  
4        determine that a customer is registered to  
5        possess controlled substances; is that  
6        correct?

7           A.       It is.

8           Q.       Section 1301.74(a) requires a  
9        registrant to then check its customer's DEA  
10      registration before distributing controlled  
11      substances to the customer, correct?

12          A.       It requires they check it at  
13      some point in time, not necessarily every  
14      time before they distribute.

15          Q.       Section 1301.74(a) imposes no  
16      other requirement on distributors to perform  
17      due diligence on its customers, does it?

18          A.       It does not.

19          Q.       And DEA conducts diligence on  
20      the applicants so the distributors can rely  
21      on the DEA registrations when complying with  
22      1301.74(a)?

23                   MR. BENNETT: Objection.

24                   Scope. Objection. Vague. Objection.

25                   Calls for speculation.

1                   And this witness is not a  
2                   30(b)(6) witness, so he's not  
3                   answering on behalf of DEA.

4                   To the extent you have an  
5                   opinion in your personal capacity, you  
6                   may answer.

7                   THE WITNESS: Okay. If you  
8                   could restate the question for me.

9                   QUESTIONS BY MR. EPPICH:

10                  Q.       I'll strike the question.

11                  Earlier today you testified  
12                  about how the Office of Diversion Control is  
13                  funded.

14                  Do you remember that testimony?

15                  A.       Yes.

16                  Q.       And you testified that the  
17                  Office of Diversion Control is funded through  
18                  registration fees; is that correct?

19                  A.       Yes.

20                  Q.       The Office of Diversion Control  
21                  is also funded through any fines levied  
22                  against registrants, correct?

23                  A.       No.

24                  Q.       Is the only source of funding  
25                  for the Office of Diversion Control

1 registration fees?

2 A. The majority is registration  
3 fees. There are also a few positions that  
4 are from appropriated funds, but very few.

5 Q. Earlier today you testified  
6 about the emergence of Internet pharmacies in  
7 the early 2000s.

8 Do you recall that testimony?

9 A. Yes, I do.

10 Q. Internet pharmacies represented  
11 a significant shift in pharmaceutical  
12 diversion, correct?

13 MR. BENNETT: Objection.

14 Vague.

15 You can answer.

16 THE WITNESS: They did  
17 represent a shift.

18 QUESTIONS BY MR. EPPICH:

19 Q. There were concerns that DEA's  
20 anti-diversion group was understaffed to  
21 address the Internet pharmacy issue?

22 A. I don't recall those concerns,  
23 no.

24 Q. DEA decided that one way to  
25 help combat the Internet pharmacies would be

1 to establish this Internet Distributor  
2 Initiative, correct?

3 Excuse me, the Internet -- let  
4 me strike that.

5 One way that -- and DEA decided  
6 that one way to combat the Internet pharmacy  
7 issue would be to establish the Distributor  
8 Initiative, correct?

9 MR. BENNETT: You can answer.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. EPPICH:

12 Q. And these Distributor  
13 Initiative meetings were meant to educate  
14 distributors about Internet pharmacies?

15 A. Yes.

16 Q. And during the Distributor  
17 Initiative meetings, you introduced  
18 additional diligence, guidance and  
19 instructions to distributors to confirm that  
20 a distributor is not servicing a rogue  
21 Internet pharmacy, correct?

22 MR. BENNETT: Objection.

23 Vague.

24 THE WITNESS: To help them  
25 understand what to look at to

1           determine if a customer is a rogue  
2           Internet pharmacy.

3       QUESTIONS BY MR. EPPICH:

4           Q.       The objective of this  
5       additional diligence that you were requesting  
6       out of distributors was for the distributors  
7       to be able to identify those rogue Internet  
8       pharmacy customers of theirs, correct?

9           A.       Yes.

10          Q.       You were not intending the  
11       additional diligence to require distributors  
12       to investigate the inner workings of every  
13       independent pharmacy across America that they  
14       may service, correct?

15           MR. BENNETT: Objection.

16           Vague. Objection. Scope.

17           You may speak on your personal  
18       capacity but not on behalf of DEA in  
19       response to this question.

20           THE WITNESS: I was expecting  
21       that over time they would use the same  
22       procedures for all the pharmacies that  
23       they were dealing with to be certain  
24       that there wasn't a problem that they  
25       wouldn't see without the extra due

1                   diligence.

2        QUESTIONS BY MR. EPPICH:

3           Q.       And the problem that they were  
4        to be looking for was whether or not they  
5        were an Internet pharmacy?

6           A.       An Internet pharmacy or any  
7        pharmacy that was selling drugs for other  
8        than legitimate medical purpose.

9           Q.       Such as a pill mill, correct?

10          A.       Yes.

11          Q.       Now, during the distributor  
12        briefings, you told distributors that you  
13        were not concerned with large retail chain  
14        pharmacies at the time, correct?

15          A.       No.

16          Q.       That's not correct?

17          A.       I don't believe so.

18          Q.       Do you recall instructing  
19        distributors at the distributor briefings to  
20        conduct due diligence on retail chain  
21        pharmacies?

22          A.       I don't recall that we made a  
23        distinction between retail chain pharmacies  
24        and independent pharmacies.

25          Q.       In asking the distributors to

1 conduct this additional diligence, you  
2 understood that distributors did not have  
3 access to all of the distribution and sales  
4 data from each of their pharmacy customers,  
5 correct?

6 A. Yes.

7 Q. And you also understood the  
8 distributors would not be able to identify  
9 all of the bad actors within the supply chain  
10 with this additional diligence, correct?

11 MR. BENNETT: Objection.

12 Vague.

13 THE WITNESS: I didn't expect  
14 that they could immediately identify  
15 everyone, no.

16 QUESTIONS BY MR. EPPICH:

17 Q. DEA -- or let me strike that.  
18 It wasn't your intention that  
19 distributors became deputized agents to the  
20 DEA, was it?

21 MR. BENNETT: Objection.

22 Vague. Argumentative.

23 THE WITNESS: No.

24 QUESTIONS BY MR. EPPICH:

25 Q. I would like to return to the

1 2007 presentation that you provided to  
2 industry with ABDC in September of 2007. I  
3 believe it's marked as Exhibit 17.

4 So the primary purpose, or a  
5 primary purpose --

6 MR. BENNETT: Counsel, I'm  
7 sorry, I just want to make sure I have  
8 the right exhibit.

9                          You said 17, which I believe  
10                        was Amerisource -- represented to be  
11                        AmerisourceBergen's presentation, not  
12                        Mr. Mapes' presentation. I think he  
13                        said he'd never seen it.

I just want to make sure since  
your question said the one "you"  
presented at the conference.

20 MR. BENNETT: Okay.

21 QUESTIONS BY MR. EPPICH:

22 Q. I'd just like to direct you to  
23 Exhibit 17.

24 Now, Mr. Mapes, you were  
25 present for the presentation by ABDC on

1 September 11, 2007; is that correct?

2 A. Yes.

3 Q. And you asked ABDC to present  
4 this information to the industry at this  
5 conference, correct?

6 MR. BENNETT: Objection.

7 Mischaracterizes prior testimony.

8 THE WITNESS: They were asked  
9 to present it. I didn't personally  
10 ask them, but someone within DEA did.

11 QUESTIONS BY MR. EPPICH:

12 Q. Thank you for that  
13 clarification.

14 And someone from the DEA asked  
15 ABDC to provide this presentation to educate  
16 the other distributors in the industry on the  
17 new standards for suspicious order monitoring  
18 programs; is that correct?

19 A. That's correct.

20 Q. I'd like you to turn to page 9  
21 of Exhibit 17.

22 And earlier you looked at the  
23 third bullet on page 9 that reads, "ABC's OMP  
24 process is now based on identify, capture,  
25 investigate and report suspicious orders all

1 prior to shipment."

2 Do you remember that testimony?

3 A. Yes.

4 Q. Do you agree that a  
5 distributor's program that identified,  
6 captured or blocked, investigated and  
7 reported suspicious orders prior to shipment  
8 would be in compliance with the Controlled  
9 Substances Act and its regulations?

10 A. It could be, depending on what  
11 their criteria for identifying suspicious  
12 orders were.

13 Q. And if that criteria were  
14 similar to the criteria presented in  
15 Exhibit 17, then such a program would be in  
16 compliance with the Controlled Substances Act  
17 and its regulations, correct?

18 MR. BENNETT: Objection.

19 Incomplete hypothetical. Vague.

20 THE WITNESS: I believe it  
21 could be, yes.

22 QUESTIONS BY MR. EPPICH:

23 Q. Earlier today you testified  
24 about -- let me strike that.

25 Sir, would you agree with me

1       that there is an opioid crisis?

2           A.       Yes.

3           Q.       Would you agree that there are  
4       a variety of factors that contribute to the  
5       opioid crisis?

6           A.       Yes.

7           Q.       Illegal heroin from cartels  
8       contributes to the opioid crisis?

9                   MR. BENNETT: Objection.

10                  Vague.

11                  THE WITNESS: I would be  
12       guessing at this point because I  
13       haven't currently kept up with the  
14       intelligence on those kind of issues.

15   QUESTIONS BY MR. EPPICH:

16           Q.       Well, in your time at the DEA,  
17       was illegal heroin from cartels contributing  
18       to an opioid crisis?

19                   MR. BENNETT: Objection.

20                  Foundation. Objection. Scope.

21                  You're not authorized to  
22       disclose information from specific DEA  
23       investigations, activities or  
24       intelligence that has not been  
25       publicly disseminated.

1                   To the extent that you can  
2                   answer this question without  
3                   disclosing nonpublic DEA information,  
4                   you can answer.

5                   THE WITNESS: I believe  
6                   generally the opioid crisis started  
7                   after I left DEA. There was heroin,  
8                   the source of which I don't know, but  
9                   there was heroin available, illicit.

10          QUESTIONS BY MR. EPPICH:

11          Q.        When do you believe the opioid  
12                  crisis started?

13          A.        I don't know.

14          Q.        Would you agree with me that  
15                  diversion can occur in many different ways?

16          A.        Yes.

17          Q.        For example, opioids can be  
18                  stolen from a delivery truck; that's  
19                  diversion, correct?

20          A.        Yes.

21          Q.        Someone could go into their  
22                  grandmother's cabinet and take their  
23                  grandmother's opioids that she was prescribed  
24                  for a legitimate purpose; that would be  
25                  diversion?

1                   A.         Yes.

2                   Q.         Someone could take opioids from  
3     a friend who was prescribed the opioids for  
4     legitimate reasons; that would be diversion,  
5     wouldn't it?

6                   A.         Yes.

7                   Q.         Distributors have nothing to do  
8     with opioids that are diverted when the  
9     opioids are stolen from friends or family  
10   members, do they?

11                  A.         No, they don't.

12                  Q.         The vast majority of diversion  
13   occurs once opioids leave the closed system  
14   of distribution; would you agree with that?

15                  A.         I don't know that to be true or  
16   not.

17                  Q.         Would you agree that  
18   distributors cannot control what happens to  
19   pills diverted outside the closed -- let me  
20   strike that.

21                              You would agree that  
22   distributors cannot control what happens to  
23   pills once those pills are delivered to their  
24   pharmacy customers, correct?

25                              MR. BENNETT: Objection. Form.

1                    You can answer.

2                    THE WITNESS: That's correct.

3                    QUESTIONS BY MR. EPPICH:

4                    Q.         Are you familiar with the term  
5        "overprescribing"?

6                    A.         Yes.

7                    Q.         What is overprescribing?

8                    A.         It's when a prescriber  
9        prescribes more controlled substances than  
10      are necessary or prescribes controlled  
11      substances to people that it may not be  
12      necessary for.

13                  Q.         Is overprescribing a form of  
14      diversion?

15                  A.         Yes.

16                  Q.         Overprescribing is a form of  
17      diversion even if the prescriber is  
18      well-intentioned and believes there's a  
19      legitimate medical purpose for prescribing  
20      the amount and dosage that he or she  
21      prescribed?

22                  MR. BENNETT: Objection. Form.

23                  Calls for speculation. Scope.

24                  THE WITNESS: It could be.

25

1       QUESTIONS BY MR. EPPICH:

2           Q.        But it's not always, is it,  
3           sir?

4           A.        I don't think so.

5           Q.        You'd agree with me the  
6       distributors have no insight into determining  
7       whether a doctor has overprescribed opioids  
8       to her patient?

9                    MR. BENNETT: Objection. Form.

10                  Calls for speculation. Incomplete  
11                  hypothetical.

12                  THE WITNESS: Generally not.

13       QUESTIONS BY MR. EPPICH:

14           Q.        Are you familiar with the term  
15       "illegal prescribing"?

16           A.        Yes.

17           Q.        What is illegal prescribing?

18           A.        Prescribing controlled  
19       substances for other than a legitimate  
20       medical purpose.

21           Q.        Is illegal prescribing a form  
22       of diversion?

23           A.        Yes.

24           Q.        You'd agree with me that  
25       illegal prescribing contributes to the opioid

1 crisis?

2 A. Yes.

3 Q. Earlier today you testified  
4 about meetings that you had with the  
5 plaintiffs' counsel in 2018.

6 Do you remember that testimony?

7 A. Yes.

8 Q. I believe you said you had two  
9 meetings, one in the summer and one in the  
10 fall of 2018, correct?

11 A. Yes.

12 Q. Now, did you -- during those  
13 meetings with the plaintiffs' counsel in  
14 2018, did you tell plaintiffs' counsel that  
15 the DEA had approved the distributors'  
16 submission of excessive purchase reports  
17 after orders had been shipped?

18 A. I believe that was discussed,  
19 yes.

20 Q. Did you tell plaintiffs'  
21 counsel during those meetings that in your  
22 experience excessive purchase reports  
23 complied with the requirements of the  
24 Controlled Substances Act and its  
25 regulations, at least for your time at DEA

1        between 1977 and the distributor briefings?

2            A.        Yes.

3            Q.        Did you tell plaintiffs'  
4        counsel during these meetings in 2018 that  
5        the Controlled Substances Act and its  
6        regulations do not include a no shipping  
7        requirement?

8            A.        I don't believe so.

9            Q.        You didn't discuss the no  
10      shipping requirement?

11          A.        I don't recall that  
12      specifically.

13          Q.        During these meetings with the  
14      plaintiffs' counsel in 2018, did you tell  
15      plaintiffs' counsel the distributor briefings  
16      focused on Internet pharmacy issues?

17          A.        Yes.

18          Q.        Did you tell plaintiffs'  
19      counsel that the additional diligence you  
20      requested of distributors at these  
21      distributor briefings was to help identify  
22      Internet pharmacies?

23          A.        I don't recall specifically  
24      that was how it was worded.

25          Q.        But something similar?

1           A.       Yes.

2           Q.       At these meetings with  
3       plaintiffs' counsel in 2018, did you tell  
4       plaintiffs' counsel that distributors had no  
5       access to the ARCOS data submitted by other  
6       distributors?

7           A.       I don't believe so.

8           Q.       Did you discuss ARCOS data with  
9       the plaintiffs' counsel in 2018?

10          A.       There was a discussion of ARCOS  
11       data, what it consists of and what's  
12       available.

13          Q.       Did you discuss who had access  
14       to ARCOS data during your meetings with  
15       plaintiffs' counsel?

16          A.       I don't recall if we did.

17          Q.       After your discussions with the  
18       plaintiffs' counsel, the plaintiffs did not  
19       contact you to ask you to serve as an expert  
20       for plaintiffs in this case, correct?

21          A.       That's correct.

22          Q.       Do you recall what other topics  
23       you discussed with plaintiffs' counsel during  
24       these meetings in 2018?

25          A.       Not really. It was just a

1 broad range of topics, but I can't come up  
2 with any particular one.

3 Q. Do you recall the names of any  
4 attorneys present at the meetings with  
5 plaintiffs' counsel in 2018?

6 A. No, I don't at this point.

7 Q. If you look to your right, do  
8 you see any of the plaintiffs' counsel here  
9 today that attended that meeting?

10 A. There's a couple that may have  
11 been at the meeting, at one of the meetings,  
12 yes.

13 Q. Do you remember any of their --  
14 can you point to any of those individuals,  
15 sir?

16 MR. FARRELL: We're just  
17 waving.

18 THE WITNESS: Yeah, they're  
19 just waving.

20 MR. LANIER: None of us were  
21 there.

22 THE WITNESS: Yeah, I don't  
23 see...

24 QUESTIONS BY MR. EPPICH:

25 Q. Okay. Now, you mentioned that

1       Mr. Rannazzisi contacted you to join  
2       plaintiffs' counsel at this meeting?

3                   A.       That's correct.

4                   Q.       Do you remember that testimony?

5                   Have you had any conversations  
6       with Mr. Rannazzisi outside of these two  
7       meetings with Mr. Rannazzisi about the opioid  
8       crisis?

9                   A.       Before the meetings, yes.

10                  Q.       And when were those  
11      conversations?

12                  A.       I don't recall the exact dates  
13       or even approximately when they were. We had  
14       a couple of phone calls and...

15                  Q.       Were they just prior to your  
16       first meeting in 2018 with the plaintiffs'  
17       counsel, or were they some years prior?

18                  A.       More along the lines of months  
19       prior.

20                  Q.       Do you recall what you  
21       discussed with Mr. Rannazzisi during those  
22       conversations?

23                  A.       A little bit about opioids and  
24       a lot about people that we knew and where  
25       they were and that kind of thing.

1 Q. During your meetings  
2 with plaintiff --

3 MR. LANIER: Can I interrupt  
4 for just a moment? I apologize.

5 The record on 218, line 16, has  
6 me saying, "One of us was there,"  
7 Ms. Campbell.

8 It should be "none of us was  
9 there," is what I said.

10 Thank you.

11 QUESTIONS BY MR. EPPICH:

12 Q. If there was a question  
13 pending, I'll strike it and start over.

14 Mr. Mapes, during the meetings  
15 with plaintiffs' counsel in 2018, were there  
16 any other former DEA employees present at the  
17 meeting?

18 A. Joe Rannazzisi was present at  
19 both, but he was the only former DEA employee  
20 that was there besides myself.

21 MR. EPPICH: Thank you, sir. I  
22 have no further questions at this  
23 time, and I'll turn you over to my  
24 colleague, Mr. Stephens.

25 VIDEOGRAPHER: Going off

1 record. The time is 4:20.

2 (Off the record at 4:20 p.m.)

3 VIDEOGRAPHER: We're going on  
4 the record. Beginning of Media  
5 File 10. The time is 4:34.

6 EXAMINATION

7 QUESTIONS BY MR. STEPHENS:

8 Q. Mr. Mapes, good afternoon. My  
9 name's Neal Stephens. I'm from the Jones Day  
10 law firm, and I represent Walmart.

11 We met earlier today, but you  
12 and I have never spoken before?

13 A. That's correct.

14 Q. Okay. I'll also be asking you  
15 some questions, not just on Walmart's behalf  
16 but also on behalf of retail chain  
17 pharmacies. And for your benefit, that will  
18 include CVS, Rite Aid, Walgreens and HBC and  
19 Giant Eagle.

20 Okay?

21 A. Yes.

22 Q. Okay. All right.

23 And since I'm going last, I've  
24 carved out a lot of material out of my  
25 outline, but I do have a couple follow-up

1 questions on some of the topics that you've  
2 already testified to today.

3 Okay?

4 A. Okay.

5 Q. And the first one is, there was  
6 a series of questions from a couple of my  
7 colleagues that related to shipping orders  
8 that had been flagged as suspicious.

11 A. Yes.

12 Q. And you had indicated that at  
13 some point you were aware that registrants  
14 had a practice of shipping orders that had  
15 been reported as suspicious.

17           A.        That had been reported before  
18        2005 in excess -- in suspicious or excessive,  
19        that they had shipped those.

20 O. I'm just -- right.

21 So my point is that you were  
22 just aware that there had been a practice at  
23 some point in time that orders that had been  
24 flagged as potentially suspicious had still  
25 been shipped. I'm just trying to reorient

1       you --

2           A.       Yes.

3           Q.       -- to that testimony. Okay?

4                   Now, is it fair --

5                   MR. BENNETT: Objection.

6                   Mischaracterizes his testimony. He  
7                   said suspicious or excessive, not just  
8                   suspicious.

9    QUESTIONS BY MR. STEPHENS:

10           Q.       Okay. Is it fair to say that  
11          you're not aware of any deadline that DEA set  
12          that changed this practice related to the  
13          shipping of suspicious orders?

14           A.       I'm aware that the practice was  
15          changed as we had meetings with wholesalers  
16          in 2005 and beyond; that then they changed  
17          from sending the excessive or suspicious  
18          orders after the fact, and they started doing  
19          it ahead of the fact and then resolving that  
20          suspicion before they shipped.

21           Q.       Okay. Mr. Mapes, but are you  
22          aware of any deadline that was set, any date  
23          certain set by DEA sent out to the  
24          registrants, as to what date that practice  
25          had to change?

1 MR. BENNETT: Objection. Asked  
2 and answered.

3 THE WITNESS: I'm not aware of  
4 a specific deadline.

5 QUESTIONS BY MR. STEPHENS:

6 Q. Okay. All right. Another  
7 topic that you addressed earlier today in the  
8 first session of questioning related to what  
9 DEA's expectations were of various  
10 registrants about how they designed their SOM  
11 system.

14 A. Yes.

15 Q. And just to reorient you, it  
16 was basically along the lines of your  
17 expectation was that a SOMs system for a  
18 registrant was not a one-size-fits-all  
19 proposition, correct?

20 A. Correct.

21 Q. It would depend on the  
22 registrant's business model, right?

23 A. Yes.

24 Q. Okay. And it's a situation  
25 where, for example, some distributors supply

1 hospitals and some don't, right?

2 A. That's correct.

3 Q. And some distributors would  
4 supply hospice centers, for example, and  
5 other registrants don't?

6 A. Correct.

7 Q. Okay. And some distributors  
8 might supply independent pharmacies that the  
9 distributor does not own, right?

10 A. Yes.

11 Q. But other distributors, like  
12 retail chain pharmacies, do not supply  
13 independent pharmacies that they do not own,  
14 right?

15 A. Correct.

16 Q. Retail chain pharmacies  
17 commonly use a self-distribution model where  
18 they only distribute through to chain stores  
19 that the retail chain pharmacy owns; is that  
20 fair?

21 A. Yes.

22 Q. And so, for example, you'd  
23 agree that during your tenure at DEA, Walmart  
24 distribution centers only distributed  
25 controlled substances to Walmart store

1 pharmacies, fair?

2 A. Yeah, that's my understanding.

3 Q. Okay. And for CVS, CVS would  
4 have done the same; they would have only  
5 supplied through to CVS stores?

6 A. Yes.

7 Q. And Rite Aid would have only  
8 distributed through to Rite Aid stores?

9 A. Yes.

10 Q. And Walgreens would have only  
11 distributed through to Walgreens stores?

12 A. Yes.

13 Q. And my last example, HBC, Giant  
14 Eagle would have only distributed through to  
15 HBC, Giant Eagle stores, fair?

16 A. I don't know about that  
17 particular retail chain, so I can't really  
18 comment.

19 Q. Okay. During your tenure at  
20 DEA, did you think that a SOM system for a  
21 retail chain pharmacy who only distributes to  
22 pharmacies that it owns may be different than  
23 a SOM system for a distributor who  
24 distributes to pharmacies that it doesn't  
25 own?

1                   A.         Yes.

2                   Q.         And would you agree that it  
3                   could be reasonable for a retail chain  
4                   pharmacy like Walmart to not have to include  
5                   all of the compliance measures in its SOM  
6                   systems that might be necessary for a  
7                   distributor who distributes controlled  
8                   substances to customers that the distributor  
9                   does not own?

10                  MR. BENNETT: Objection.

11                  Scope. Vague. Incomplete  
12                  hypothetical.

13                  You can answer.

14                  THE WITNESS: Yes, I agree  
15                  there could be differences between the  
16                  systems for those two organizations.

17                  QUESTIONS BY MR. STEPHENS:

18                  Q.         Okay. Would you agree that  
19                  during your tenure at DEA you expected that  
20                  each registrant would take reasonable steps  
21                  to try to avoid shipping to customers who  
22                  would divert the controlled substances?

23                  A.         Yes.

24                  Q.         And would you agree that one  
25                  key point of the Controlled Substances Act is

1       that you wanted distributors to set up their  
2       supply chain so they took reasonable steps to  
3       try to avoid supplying controlled substances  
4       to customers who may divert them?

5           A.       Yes.

6           Q.       And is it fair to say that if a  
7       distributor did not supply customers who  
8       diverted opioids, the distributor was  
9       behaving reasonably?

10              MR. BENNETT: Objection.

11              Scope. Incomplete hypothetical.

12              You can answer.

13              THE WITNESS: It would be fair  
14       to say, yes, that if no one that they  
15       distributed to was diverting drugs,  
16       that their systems were appropriate.

17    QUESTIONS BY MR. STEPHENS:

18           Q.       Okay. As an example, would you  
19       agree that a distributor was acting  
20       reasonably if it structured its business so  
21       it did not distribute controlled substances  
22       to rogue Internet pharmacies and only  
23       distributed to retail chain pharmacies who  
24       were among the registrants who did not divert  
25       controlled substances?

1 MR. BENNETT: Objection.

2 Scope. Incomplete hypothetical.

3 Calls for speculation.

4 THE WITNESS: If they did not  
5 distribute to Internet pharmacies and  
6 did not distribute to anyone who  
7 diverted, my opinion is that  
8 they're being reasonable, yes.

9 QUESTIONS BY MR. STEPHENS:

10 Q. As a general matter, during  
11 your tenure as a diversion investigator,  
12 would you agree that you focused your  
13 anti-diversion efforts where you saw  
14 diversion occurring?

15 A. Where we saw diversion  
16 occurring and where we saw where we could  
17 influence that, whether it was at that level  
18 or another level.

19 Q. Okay. Would you agree that in  
20 the 2005, 2006 time frame, you saw diversion  
21 of controlled substances occurring in rogue  
22 Internet pharmacies?

23 A. Yes, among other places.

24 Q. Okay. And during that time  
25 frame, the 2005, 2006 time frame, rogue

1 Internet pharmacies became a focus for you  
2 and other diversion investigators at DEA?

3 A. They did.

4 Q. Would you agree that in the  
5 2006 era, rogue Internet pharmacies presented  
6 you and your colleagues at DEA with the  
7 greatest threat of diversion that was  
8 operating within the closed system of  
9 distribution that DEA regulates?

10 A. I don't know that they were the  
11 greatest threat, because there was still all  
12 the other situations with doctors who were  
13 overprescribing and pharmacies who were  
14 selling without prescriptions and those  
15 things. So I can't really quantify which was  
16 the biggest threat.

17 Q. Okay. But would you agree,  
18 Mr. Mapes, that in this time period, this  
19 2005, 2006 time frame, the onset of rogue  
20 Internet pharmacies led DEA to institute its  
21 Internet Distributor Initiative that you've  
22 testified earlier today?

23 A. Yes.

24 Q. And as part of that effort, you  
25 met with wholesale distributors to educate

1 them about the issues presented by rogue  
2 Internet pharmacies?

3 A. That's correct.

4 Q. Can you recall how many  
5 meetings you personally attended?

6 A. No.

7 Q. Can you estimate?

8 Was it more than ten?

9 A. My estimate is 10 or 12.

10 Q. Okay. But it wouldn't have  
11 been more than 15?

12 A. I'm not really certain.

13 Q. Okay. How about this: It  
14 wouldn't have been more than 20?

15 A. Probably not.

16 Q. Okay. Were there others? Did  
17 you have other colleagues at DEA during this  
18 time frame that you're aware of who were also  
19 meeting with wholesale distributors on this  
20 distributor briefing?

21 A. There were others after I  
22 retired from DEA who were doing it. I think  
23 I was involved in every one of the  
24 distributor briefings while I was still  
25 there.

1 Q. Okay. And can you refresh me  
2 on when these briefings started?

3 Was it 2005?

4 A. Yes.

5 Q. Okay. And you retire in  
6 mid-2007?

7 A. October of 2007, yes.

8 Q. You remember that date, right?

9 A. Yes.

10 Q. Okay. After 30 years, you can  
11 remember that date, right?

12 Okay. Fair enough.

13 All right. So in between 2005  
14 and October of 2007, your recollection is, is  
15 that there were about 12 or so Internet  
16 distributor briefings that you conducted with  
17 wholesale distributors?

18 A. Yes.

19 Q. Okay. And was each of those  
20 like a one-on-one meeting between DEA and one  
21 wholesale distributor?

22 A. One distributor, several people  
23 from the distributor at times, sometimes an  
24 individual, and sometimes with counsel,  
25 sometimes without.

1                   Q.         Okay. So my point, Mr. Mapes,  
2         is your recollection of the entirety of the  
3         number of wholesale distributors who received  
4         this briefing during your career at DEA is  
5         about 12?

6                   A.         About that.

7                   Q.         Okay. How did DEA -- or how  
8         did you select which wholesale distributor  
9         was going to receive the briefing?

10                  A.         We started at first with  
11         Amerisource, Cardinal and McKesson because  
12         they're obviously those with the largest  
13         volume, and then we went to lower volume  
14         distributors such as HD Smith and others that  
15         were maybe regional distributors, not  
16         nationwide distributors, that kind of thing.

17                  Q.         Okay. So you've identified  
18         four.

19                   Can you recall any of the other  
20         eight or so that you met with during your  
21         career?

22                  A.         Not right now, I can't.

23                  Q.         You did not meet with Walmart  
24         to provide an Internet distributor briefing  
25         between 2005 and 2007, correct?

1 A. That's correct.

2 Q. Do you agree that during this  
3 time frame DEA acknowledged in presentations  
4 that it made that no chain pharmacies were  
5 rogue pharmacies?

6 MR. BENNETT: You can answer.

7 THE WITNESS: I don't believe  
8 that was in DEA presentations.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. Let me see if I can  
11 refresh your recollection.

12 A. Okay.

13 (Mapes Exhibit 19 marked for  
14 identification.)

15 QUESTIONS BY MR. STEPHENS:

16 Q. So I'm going to show you what's  
17 been marked as Deposition Exhibit Number 19.  
18 It's a document that is Bates-numbered  
19 US-DEA-00002413.

20 And if you look at the very  
21 first slide, it says "Internet Pharmacies."  
22 It's got Mr. Rannazzisi's name there, and  
23 it's a slide deck.

24 Do you see that?

25 A. Yes.

1 Q. And I'd ask you to turn to  
2 Slide 50 in the presentation. It's almost  
3 all the way at the back, Mr. Mapes.

4 Do you see that?

5 A. I do.

6 Q. And Slide 50 details -- the  
7 title is "The Rogue Pharmacy."

8 Do you see that?

9 A. Yes.

10 Q. Do you see the second bullet?

11 A. Yes.

12 Q. What does the second bullet  
13 say?

14 A. "No chain pharmacies."

15 Q. Okay. And does this appear to  
16 you to be a presentation that DEA provided on  
17 the topic of Internet pharmacies?

18 MR. BENNETT: Objection.

19 Foundation.

20 And I also object that the  
21 witness did not have a chance to  
22 review the entire document or  
23 understand the context of the  
24 particular slide that you pointed him  
25 out to.

## 7 QUESTIONS BY MR. STEPHENS:

8 Q. If you look at the -- page 2 or  
9 slide 2, you'll see a date at the bottom,  
10 March of 2007.

11 Do you see that?

12 A. Yes.

13 Q. Okay. And you were still at  
14 DEA in March of 2007?

15 A. Yes.

16 Q. Okay. All right. I'm finished  
17 with that exhibit, Mr. Mapes.

18                           In enforcing the Controlled  
19 Substances Act during your tenure at DEA, did  
20 you believe that every registrant was  
21 entitled to due process in every diversion  
22 investigation that you conducted?

23 MR. BENNETT: You can answer.

24 THE WITNESS: Yes.

1       QUESTIONS BY MR. STEPHENS:

2           Q.        Why?

3           A.        Just part of the system.

4           Q.        But what do you mean "part of  
5       the system"?

6           A.        That if we find something that  
7       we think is wrong, that they, either in a  
8       response to a letter of admonition or an  
9       administrative hearing or any other forum,  
10      they provide their take on the situation.

11          Q.        Okay. Do you believe that DEA  
12       must separately assess the facts as to each  
13       individual actor in DEA's closed system of  
14       distribution to determine whether a  
15       particular registrant has violated the  
16       Controlled Substances Act?

17           MR. BENNETT: You can answer.

18           THE WITNESS: Yes, I believe  
19       that they need to look at each  
20       registrant individually rather than  
21       looking at an entire group.

22       QUESTIONS BY MR. STEPHENS:

23          Q.        So would you agree that every  
24       manufacturer, distributor and retail chain  
25       pharmacy is entitled to individualized review

1 of its own conduct before being accused for  
2 potential violations of the Controlled  
3 Substances Act committed by somebody else?

4 MR. BENNETT: Objection.

5 Vague. Scope.

6 You can answer in your personal  
7 capacity.

8 THE WITNESS: Yeah, I believe  
9 that they -- they should have that  
10 opportunity, yes.

11 QUESTIONS BY MR. STEPHENS:

12 Q. So, for example, would you  
13 agree that you should not accuse a retail  
14 chain pharmacy of improper distribution where  
15 a rogue Internet pharmacy diverts controlled  
16 substances and there is no evidence that the  
17 retail chain pharmacy distributed the  
18 controlled substances to the rogue Internet  
19 pharmacy?

20 MR. BENNETT: Objection.

21 Vague. Scope. Incomplete  
22 hypothetical.

23 You can answer in your personal  
24 capacity.

25 THE WITNESS: Yes, I believe

1           that each should be treated  
2           differently based on the facts and  
3           circumstances.

4       QUESTIONS BY MR. STEPHENS:

5           Q.       So let's go back to another  
6       topic that you mentioned briefly this  
7       morning. You had mentioned a DEA 6 report.

8                   Do you remember talking about  
9       that when you were talking about your time in  
10      Detroit and Cleveland as diversion  
11      investigator?

12           A.       Yes.

13           Q.       Can you describe what a DEA 6  
14      report is?

15           A.       A DEA 6 is just a form for  
16      reporting investigative information.

17           Q.       And one of the purposes of  
18      reporting it in a DEA 6 is that information  
19      is preserved for other investigators to use  
20      on other investigations if the information  
21      that you put in there might be relevant to  
22      them?

23                   MR. BENNETT: Objection.

24                   Scope.

25                   You're not authorized to

1           disclose law enforcement sensitive  
2           information or confidential  
3           investigative techniques.

4                 You may answer this question  
5                 yes or no only on whether that would  
6                 be one of your purposes in doing a  
7                 DEA 6.

8                 THE WITNESS: Yes, it would be.

9         QUESTIONS BY MR. STEPHENS:

10           Q.         Okay. You also, in the course  
11           and scope of your duties as a diversion  
12           investigator over your 30 years at DEA, you  
13           had the opportunity to use DEA's NADDIS  
14           database, correct?

15                 MR. BENNETT: Objection.

16                 Scope.

17                 You may answer that question  
18                 yes or no only on whether you used the  
19                 NADDIS database.

20                 THE WITNESS: Yes, I did.

21         QUESTIONS BY MR. STEPHENS:

22           Q.         And the NADDIS database stands  
23           for Narcotics and Dangerous Drugs Information  
24           System?

25                 MR. BENNETT: You can answer

1                   that question, if you know.

2                   THE WITNESS: Yes.

3                   QUESTIONS BY MR. STEPHENS:

4                   Q.         Okay. NADDIS -- at a very  
5                   general, high level, NADDIS is a database  
6                   where DEA agents will input information about  
7                   subjects of investigation, including any  
8                   contact information or biographical  
9                   information they might have on that subject?

10                  MR. BENNETT: Objection.

11                  Scope.

12                  You are not authorized to  
13                  disclose information regarding  
14                  confidential databases maintained by  
15                  the DEA or the information contained  
16                  therein.

17                  And so to the extent you can  
18                  answer without disclosing the  
19                  confidential information or ways that  
20                  the database is used, you can answer.

21                  Beyond that, you are not  
22                  authorized to disclose information  
23                  regarding specific databases that are  
24                  nonpublic.

25                  THE WITNESS: Okay.

1                   It's a database where  
2                   headquarters inputs information from  
3                   DEA reports of investigation.

4       QUESTIONS BY MR. STEPHENS:

5                   Q.        Okay. And it's preserved for  
6                   other agents in other locations to use  
7                   downstream if there might be something  
8                   helpful there?

9                   MR. BENNETT: Objection.

10                  Scope.

11                  You are not authorized to  
12                  disclose confidential law enforcement  
13                  investigative techniques.

14                  You may answer yes or no only  
15                  as far as whether you used NADDIS for  
16                  the purpose -- for that purpose.

17                  THE WITNESS: Yes, I did.

18       QUESTIONS BY MR. STEPHENS:

19                  Q.        Okay. DEA diversion  
20                  investigators also use something called the  
21                  RICS database; is that accurate?

22                  A.        I never heard of that.

23                  Q.        You have not heard of the  
24                  database called the Registrant Information  
25                  Consolidation System database?

1                   A.         I have not.

2                   Q.         Would you agree that narcotics  
3 enforcement, based on your experience, is  
4 more effective when federal agencies  
5 cooperate with each other on investigations?

6                   MR. BENNETT: Objection.

7                   Scope.

8                   You may answer that with your  
9 personal opinion, but you are not  
10 speaking on behalf of DEA.

11                  THE WITNESS: Yes, my personal  
12 opinion is that cooperation with other  
13 agencies is important.

14                  QUESTIONS BY MR. STEPHENS:

15                  Q.         And your personal opinion,  
16 based on all of your personal experience as a  
17 DEA diversion investigator, would be that  
18 when both agencies share information with  
19 each other, the agencies can make more  
20 informed decisions about how to structure  
21 their investigations?

22                  MR. BENNETT: Objection.

23                  Vague. Objection. Scope.

24                  You may give your personal  
25 opinion, if you understand the

1 question.

2 THE WITNESS: Yes, they can.

3 QUESTIONS BY MR. STEPHENS:

4 Q. And would you agree as a  
5 general matter, based on your 30 years of  
6 experience at DEA, that the sharing of  
7 information between investigative agencies  
8 leads to more collaboration among law  
9 enforcement, which often leads to more  
10 successful investigation and reduces  
11 diversion?

12 MR. BENNETT: Same objection.

13 THE WITNESS: I would agree  
14 that it leads to more collaboration  
15 and effective investigations.

16 QUESTIONS BY MR. STEPHENS:

17 Q. Okay. And would you agree,  
18 based on your experience in your cases that  
19 you've worked over the years, that diversion  
20 can be reduced when DEA chooses to share  
21 information with other federal, state and  
22 local law enforcement agencies?

23 MR. BENNETT: Objection.

24 Scope.

25 You are not authorized to speak

1                   on behalf of DEA.

2                   If you have a personal opinion,  
3                   you may give your personal opinion  
4                   based on your personal experiences.

5                   THE WITNESS: My opinion is  
6                   that it's hard to quantify diversion  
7                   and whether or not sharing of  
8                   information reduces diversion.

9                   So it does lead to more  
10                  investigations, but whether those  
11                  reduce diversion or not, I'm not  
12                  certain.

13                  QUESTIONS BY MR. STEPHENS:

14                  Q.         Would you agree that drug  
15                  traffickers and diverters are the ones who  
16                  potentially benefit if DEA decides to isolate  
17                  itself from folks who could help advance  
18                  DEA's diversion investigations?

19                  MR. BENNETT: Objection.

20                  Vague. Calls for speculation. Scope.

21                  You are not authorized to speak  
22                  on behalf of DEA.

23                  If you have personal  
24                  information that you can form a  
25                  personal opinion, you may give your

1 personal opinion.

2 THE WITNESS: I've forgotten  
3 the question now.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Sure.

6 Would you agree that drug  
7 traffickers and diverters are the ones who  
8 potentially benefit if DEA decides to isolate  
9 itself from individuals who could help  
10 advance DEA's diversion investigations who  
11 are outside of DEA?

12 A. If those individuals are other  
13 law enforcement agencies, yes.

14 Q. Okay. Would you agree that DEA  
15 should be ready, willing and able to share  
16 information with any good faith registrant  
17 who could help DEA prevent diversion?

18 MR. BENNETT: Objection.

19 Scope. Vague. Incomplete  
20 hypothetical. Calls for speculation.

21 You are not authorized to speak  
22 on behalf of DEA. If you have  
23 personal experiences which will allow  
24 you to form a personal opinion, you  
25 may give your personal opinion.

5 QUESTIONS BY MR. STEPHENS:

6 Q. Okay. Based on your experience  
7 at DEA, as you were trying to make a  
8 determination as to whether to bring an  
9 action against someone, would you agree that  
10 to make the most accurate assessment of the  
11 charging decision that was in front of you,  
12 that you wanted as much relevant information  
13 as possible about the suspect's action in  
14 front of you so you can make an accurate,  
15 informed decision on what DEA should do?

16 MR. BENNETT: Objection.

## 17                    Vague.     Form.

18 You can answer.

19 THE WITNESS: Yes.

20 QUESTIONS BY MR. STEPHENS:

21 Q. If your colleagues down the  
22 road at FBI withheld relevant information  
23 from you on an investigation so that you only  
24 had partial information about your suspect's  
25 conduct, would you agree that it would make

1 it harder for you to make an accurate,  
2 informed decision about what to do?

3 MR. BENNETT: Objection. Form.

4 Scope. Vague. Calls for speculation.

5 You can answer.

10 QUESTIONS BY MR. STEPHENS:

11                   Q.         Okay. And since it could be  
12 detrimental, would you agree that the sharing  
13 of information between FBI and DEA in the  
14 question I just posed to you would reduce the  
15 number of potential mistakes a law  
16 enforcement agency might make on an important  
17 decision in an investigation?

18 MR. BENNETT: Objection. Form.

19 Scope. Vague. Calls for speculation.

20 Incomplete hypothetical.

21 You can answer.

22 THE WITNESS: Yes, I would  
23 agree.

24 QUESTIONS BY MR. STEPHENS:

25 Q. Okay. Given your general

1 duties included some leadership positions at  
2 DEA and at headquarters, I'd like to ask you  
3 some questions about leadership principles  
4 that you may have followed during your time  
5 at DEA.

6 Okay?

7 A. Okay.

8 Q. All right. So based on your  
9 experience as a leader at DEA, would you  
10 agree that the success of an organization  
11 often depends in part on tactical decisions  
12 made by its leader?

13 MR. BENNETT: Objection.

14 Vague.

15 THE WITNESS: Yes.

16 QUESTIONS BY MR. STEPHENS:

17 Q. Do you agree that good leaders  
18 hold themselves accountable for the decisions  
19 they make?

20 A. Yes.

21 Q. If your goal is to reduce  
22 diversion, would you agree that a good leader  
23 at DEA should be willing to share information  
24 about diversion issues with good faith  
25 registrants so the registrants may be able to

1 use that information to help DEA decrease  
2 diversion?

3 MR. BENNETT: Objection. Form.

4 Scope. Vague. Incomplete  
5 hypothetical. Calls for speculation.

6 You can answer, if you have an  
7 opinion.

8 THE WITNESS: Yes, they should,  
9 but again within the constraints of  
10 what's authorized by law and  
11 regulation.

12 QUESTIONS BY MR. STEPHENS:

13 Q. Would you agree that good  
14 leaders at DEA also ensure that their  
15 personal conduct and the conduct of their  
16 team comports to the standards that they  
17 expect others to follow?

18 MR. BENNETT: Objection.

19 Vague.

20 THE WITNESS: I don't quite  
21 understand the question.

22 If you're saying that the DEA  
23 employees comport to the same  
24 standards they're expecting  
25 registrants, they're in a different

1                   business and doing different things,  
2                   so...

3                   QUESTIONS BY MR. STEPHENS:

4                   Q.         Well, let me ask it this way.

5                   Do you agree that the American  
6                   public has a right to expect that the leaders  
7                   of our law enforcement agencies will lead  
8                   their teams in a fashion that is consistent  
9                   with the standards that they impose on the  
10                  folks that they regulate?

11                  MR. BENNETT: Objection.

12                  Vague. Calls for speculation.

13                  THE WITNESS: It seems  
14                  reasonable, yes.

15                  QUESTIONS BY MR. STEPHENS:

16                  Q.         Okay. Is it fair to say that  
17                  the American public has a right to expect  
18                  that when DEA sees diversion happening, DEA  
19                  will not simply let the diversion continue to  
20                  happen?

21                  MR. BENNETT: Objection.

22                  Vague. Incomplete hypothetical.

23                  Calls for speculation.

24                  THE WITNESS: Yes, but within  
25                  the bounds of the available resources.

1       QUESTIONS BY MR. STEPHENS:

2           Q.       Based on your experience as a  
3       leader at DEA, if DEA expects registrants it  
4       regulates to take reasonable measures to  
5       prevent diversion, is it fair for the  
6       American public to expect that DEA will do  
7       the same?

8                   MR. BENNETT: Objection.

9                   Incomplete hypothetical. Vague.

10                  Calls for speculation. Scope.

11                  You can answer, if you have an  
12       opinion.

13                  THE WITNESS: I really don't  
14       have an opinion on that.

15       QUESTIONS BY MR. STEPHENS:

16           Q.       All right. Well, how about  
17       this.

18                  If DEA has information that a  
19       shipment of controlled substances headed to  
20       Customer X will be diverted by Customer X, do  
21       you think that the American public should be  
22       able to rely on DEA to step in and intercept  
23       that shipment of controlled substances before  
24       those controlled substances reach Customer X?

25                   MR. BENNETT: Objection.

1               Scope. Vague. Incomplete  
2               hypothetical. Calls for speculation  
3               and calls for a legal conclusion.

4               THE WITNESS: I believe the DEA  
5               should take some appropriate action,  
6               and that should be expected.

7    QUESTIONS BY MR. STEPHENS:

8               Q.        Okay. Let me switch gears here  
9               a little bit.

10               And what I'd like to do is ask  
11               you some questions about some of -- some of  
12               the investigative techniques that DEA has  
13               that may be different than what a registrant  
14               might be able to do as it's setting up its  
15               SOM program.

16               Okay?

17               A.        Okay.

18               Q.        During your tenure as a DEA  
19               investigator, were there occasions where you  
20               were able to identify a potential diverter  
21               based on information that DEA developed as  
22               opposed to information that was provided to  
23               DEA by a registrant in a suspicious order  
24               report?

25               MR. BENNETT: Objection.

1 Scope.

2 You may answer that question  
3 yes or no only.

4 THE WITNESS: Yes.

5 QUESTIONS BY MR. STEPHENS:

6 Q. Okay. Would you agree that DEA  
7 has unique law enforcement investigative  
8 powers that are available to DEA to identify  
9 potential diverters that are not available to  
10 a registrant like Walmart?

11 MR. BENNETT: Objection.

12 Vague.

13 THE WITNESS: Yes.

14 QUESTIONS BY MR. STEPHENS:

15 Q. Okay. DEA has subpoena power,  
16 for example, correct?

17 A. That's correct.

18 Q. Walmart does not have subpoena  
19 power to subpoena a doctor, correct?

20 A. Not that I'm aware of.

21 Q. Okay. Now, DEA can issue  
22 subpoenas to help investigate potential  
23 diversion, right?

24 MR. BENNETT: Objection. Form.

25

1       QUESTIONS BY MR. STEPHENS:

2           Q.       Based on your experience, do  
3       you agree that DEA can issue a subpoena to  
4       help investigate potential diverters?

5           MR. BENNETT: You can answer,  
6       if you know.

7           THE WITNESS: Yes.

8       QUESTIONS BY MR. STEPHENS:

9           Q.       Okay. And during your time at  
10      DEA, DEA collected information in diversion  
11      investigation through subpoenas?

12           MR. BENNETT: Objection.  
13       Scope.

14           You may answer that question  
15       yes or no only.

16           THE WITNESS: Yes.

17       QUESTIONS BY MR. STEPHENS:

18           Q.       To your knowledge, did Joe  
19      Rannazzisi ever authorize you or anyone else  
20      to share information with any registrant the  
21      DEA had obtained through subpoenas?

22           MR. BENNETT: Objection.  
23       Scope.

24           You may answer that question  
25       yes or no only.

1 THE WITNESS: No.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Would you agree that search  
4 warrants are a second vehicle that provide  
5 DEA an investigative tool that registrants  
6 like Walmart do not have?

7 MR. BENNETT: You can answer.

8 THE WITNESS: Yes.

9 QUESTIONS BY MR. STEPHENS:

10 Q. Okay. DEA can apply to a  
11 magistrate judge to obtain a search warrant,  
12 right?

13 A. Yes.

14 Q. And a search warrant would give  
15 DEA the ability to potentially search rogue  
16 pain clinics to obtain documents that might  
17 advance a diversion investigation the DEA is  
18 conducting?

19 A. That's correct.

20 MR. BENNETT: Objection.

21 Objection. Scope.

22 You can answer that yes or no  
23 only based on your personal  
24 experiences.

25 THE WITNESS: Yes.

1       QUESTIONS BY MR. STEPHENS:

2           Q.        Okay. Based on your personal  
3       experience, Mr. Mapes, DEA also can obtain  
4       what is known as an ISP search warrant, an  
5       Internet service provider search warrant,  
6       which allows DEA to intercept e-mail  
7       communications which would include  
8       conversations between a doctor and the  
9       doctor's patients that might relate to  
10      diversion, true?

11                  MR. BENNETT: Objection.

12                  Scope.

13                  You are authorized to answer  
14       whether you know of a document  
15       entitled an "ISP search warrant" in  
16       your personal experience, yes or no  
17       only.

18                  THE WITNESS: No.

19       QUESTIONS BY MR. STEPHENS:

20           Q.        You've never heard of an ISP  
21       search warrant?

22           A.        No.

23           Q.        Okay. All right.

24                  But just on the topic of search  
25       warrants generally, we'll go to premises

1 search warrant, which is the first example I  
2 gave you where you go to a magistrate, the  
3 magistrate authorizes DEA to go to address X  
4 and DEA conducts a search there.

5 You're familiar with those,  
6 right?

7 A. Yes.

8 Q. Okay. Now, did Joe Rannazzisi  
9 ever authorize, to your knowledge, anyone at  
10 DEA to disclose to any registrant any  
11 information obtained from a search warrant so  
12 that that registrant could help DEA in a  
13 diversion investigation?

14 MR. BENNETT: Objection.

15 Scope.

16 You may answer that question.

17 THE WITNESS: Not that I'm  
18 aware of.

19 MR. BENNETT: Well --

20 QUESTIONS BY MR. STEPHENS:

21 Q. Okay.

22 MR. BENNETT: He's answered  
23 your question.

24 I do object to the scope of  
25 that. I was going to authorize him to

1 answer that yes or no only.

2 He has said not to his  
3 knowledge, so we can move on.

4 QUESTIONS BY MR. STEPHENS:

5 Q. And just to reconfirm, Walmart  
6 has no ability to go to a magistrate judge to  
7 obtain a search warrant, right?

8 A. That's correct.

9 Q. No registrant can go to a  
10 magistrate judge and seek a search warrant,  
11 right?

12 A. I wouldn't say that, because  
13 DEA is a registrant, so...

14 Q. Okay. Other than law  
15 enforcement agencies, no private sector  
16 registrant can go to a magistrate and seek a  
17 search warrant; is that fair?

18 A. Yes.

19 Q. All right. The use of the  
20 grand jury is a third example of an  
21 investigative technique that is unique to law  
22 enforcement and something that is not  
23 available to private sector registrants,  
24 fair?

25 MR. BENNETT: Objection.

1 Scope. Objection. Form. Calls for a  
2 legal conclusion.

3 You can answer, if you know, in  
4 your personal knowledge.

5 THE WITNESS: Yes.

6 MR. BENNETT: I'm sorry, I'm  
7 not sure I understand his answer to  
8 your question on whether somebody in  
9 the private sector can go to the grand  
10 jury or not.

11 QUESTIONS BY MR. STEPHENS:

12 Q. Okay. So let me restate it.

13 Based on your experience at  
14 DEA, can anyone other than law enforcement  
15 use the grand jury as a tool to conduct due  
16 diligence on a customer?

17 A. No.

18 Q. Okay. Would you agree that the  
19 grand jury is an investigative technique that  
20 is available to law enforcement and law  
21 enforcement only?

22 MR. BENNETT: Objection.

23 Vague. Objection. Calls for a legal  
24 conclusion.

25 You can answer in your personal

1 knowledge, if you know.

2 THE WITNESS: Yes, it is a  
3 tool.

4 QUESTIONS BY MR. STEPHENS:

5 Q. Okay. And DEA can subpoena a  
6 suspected diverter to the grand jury and ask  
7 him questions under the penalty of perjury  
8 related to whether that individual has  
9 diverted any controlled substances?

10 MR. BENNETT: Objection.

11 Vague. Objection. Calls for a legal  
12 conclusion. Objection. Foundation.

13 If you have any personal  
14 knowledge whether DEA can subpoena a  
15 suspected diverter -- oh, and  
16 objection. Scope.

17 You may answer in your personal  
18 knowledge.

19 THE WITNESS: My personal  
20 opinion is that DEA can serve a  
21 subpoena that was issued, but DEA  
22 doesn't issue subpoenas.

23 QUESTIONS BY MR. STEPHENS:

24 Q. Okay. The subpoena would be  
25 issued by either a federal prosecutor's

1 office, a US Attorney's office, or a state  
2 prosecutor's office?

3 A. Yes.

4 Q. A district attorney's office,  
5 right?

6 A. Yes.

7 Q. Okay. If DEA and the  
8 prosecutors believe that a witness has lied  
9 in providing testimony to a grand jury, that  
10 individual could be prosecuted for perjury,  
11 right?

12 MR. BENNETT: Objection.

13 Incomplete hypothetical. Calls for a  
14 legal conclusion. Scope.

15 You can answer based on your  
16 personal experience, if you know.

17 THE WITNESS: I haven't had the  
18 personal experience of that happening,  
19 no.

20 QUESTIONS BY MR. STEPHENS:

21 Q. Okay. Would you agree that  
22 being able to compel witnesses to the grand  
23 jury and answer questions under the penalty  
24 of perjury is a very valuable tool to DEA in  
25 building diversion cases?

1 MR. BENNETT: Objection.

2 Vague. Scope. Calls for a legal  
3 conclusion.

4 You can answer.

5 THE WITNESS: Yes.

6 QUESTIONS BY MR. STEPHENS:

7 Q. And Walmart cannot compel  
8 witnesses to testify in front a grand jury,  
9 correct?

10 A. That's correct.

11 Q. And the other companies who  
12 you've met today at your deposition, none of  
13 them have the ability to compel any witnesses  
14 to go to a grand jury; is that fair?

15 A. That's correct.

16 Q. Okay. Would you agree that  
17 conducting undercover operations present a  
18 fourth example where DEA has unique  
19 investigative tools to conduct diversion  
20 investigations?

21 MR. BENNETT: Objection.

22 Vague. Objection. Scope.

23 If you have an opinion, you may  
24 answer that question yes or no only.

25 THE WITNESS: Yes.

1       QUESTIONS BY MR. STEPHENS:

2           Q.        Okay. For example, based on  
3       your experience conducting diversion  
4       investigations, DEA can use undercover  
5       officers to purchase controlled substances  
6       from diverting Internet pharmacies and pain  
7       clinics?

8                   MR. BENNETT: Objection.

9                   Scope.

10                  You are not authorized to  
11       disclose confidential law enforcement  
12       investigative or intelligence-  
13       gathering and dissemination techniques  
14       whose effectiveness would thereby be  
15       impaired.

16                  To the extent that you can  
17       answer the question without disclosing  
18       confidential law enforcement  
19       investigative techniques, you can  
20       answer. Otherwise, you are instructed  
21       not to answer.

22                  THE WITNESS: Yes, they can.

23       QUESTIONS BY MR. STEPHENS:

24           Q.        Okay. The undercover officers  
25       in a DEA operation, for example, in a

1 diversion investigation, are allowed to  
2 legally tape record the conversations that  
3 they have with the operator of the business  
4 that's under investigation?

5 MR. BENNETT: Objection.

6 Scope.

7 You are not authorized to  
8 disclose confidential law enforcement  
9 techniques or how undercover  
10 investigations are done. Also, you  
11 are not authorized to draw legal  
12 conclusions.

13 I'm instructing you not to  
14 answer that question.

15 MR. STEPHENS: On what --

16 MR. FARRELL: Sustained.

17 MR. STEPHENS: On what basis?

18 MR. BENNETT: That it's a  
19 confidential law enforcement  
20 investigative technique on how they do  
21 investigations and what evidence they  
22 gather.

23 QUESTIONS BY MR. STEPHENS:

24 Q. Are you aware, Mr. Mapes, that  
25 there had been literally thousands of

1 investigations that have played out in  
2 courtrooms across the United States of  
3 America where United States Attorneys have  
4 put DEA agents on the stand and have played  
5 tapes of undercover operations to convince  
6 juries to convict drug traffickers under  
7 Title 21?

8 MR. BENNETT: You may answer  
9 that question, based on your personal  
10 knowledge, yes or no only.

11 THE WITNESS: Yes.

12 QUESTIONS BY MR. STEPHENS:

13 Q. Okay. So then undercover  
14 officers can legally tape record  
15 conversations that they have with the  
16 operators of the businesses that DEA is  
17 investigating; is that fair?

18 MR. BENNETT: Objection. Calls  
19 for a legal conclusion. Scope.

20 I don't think this witness can  
21 draw a legal conclusion in this  
22 deposition.

23 You're asking whether he can  
24 legally tape. I don't think he's both  
25 authorized to do that or qualified to

1                   make a conclusion. Plus, I think it's  
2                   an incomplete hypothetical.

3                   So I'm going to instruct him  
4                   that he's not authorized on behalf of  
5                   DEA or use any DEA information in  
6                   answering that question.

7                   MR. STEPHENS: Okay. I will  
8                   move on to conserve time.

9                   QUESTIONS BY MR. STEPHENS:

10                  Q.         Would you agree that Walmart  
11                  and CVS, Walgreens, Rite Aid, do not have the  
12                  ability to use law enforcement agents to  
13                  conduct undercover operations of businesses?

14                  MR. BENNETT: Objection.

15                  Vague. Incomplete hypothetical.

16                  Calls for a legal conclusion.

17                  You can answer if you have an  
18                  opinion.

19                  THE WITNESS: No, I'm not  
20                  really certain about that.

21                  QUESTIONS BY MR. STEPHENS:

22                  Q.         Okay. Are you aware that it  
23                  might be illegal in certain states for a  
24                  private actor, private company, to secretly  
25                  tape record conversations with other people?

1 MR. BENNETT: Objection.

2 Scope.

3 To the extent you have personal  
4 information, you can answer that --  
5 you can give your personal opinion.

6 Calls for a legal conclusion.

7 THE WITNESS: I don't know  
8 which states may have which laws, so I  
9 can't really answer that.

10 QUESTIONS BY MR. STEPHENS:

11 Q. So you don't know one way or  
12 the other. Okay.

13 To your knowledge, did Joe  
14 Rannazzisi ever authorize you or anyone else  
15 that you know of at DEA to disclose to  
16 registrants who could help DEA in diversion  
17 investigations information that DEA had  
18 obtained in undercover operations?

19 MR. BENNETT: Objection.

20 Scope.

21 You are not authorized to  
22 disclose information regarding  
23 specific DEA investigations or  
24 activities. You may answer this  
25 question yes or no only.

1 THE WITNESS: No.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Okay. As a fifth example of an  
4 investigative technique that is unique to DEA  
5 and federal law enforcement, would you agree  
6 that DEA, in a local US Attorney's Office,  
7 has the ability to apply to a judge for an  
8 order that would allow DEA to record  
9 telephone calls made by the subject of DEA's  
10 investigation, a Title 3 wiretap?

11 MR. BENNETT: You can answer  
12 that question.

13 THE WITNESS: Yes.

14 QUESTIONS BY MR. STEPHENS:

15 Q. And would you agree that a  
16 Title 3 wiretap allows DEA to listen in to  
17 every discussion over the target's telephone?

18 MR. BENNETT: Objection.

19 Scope. Calls for a legal conclusion.

20 Incomplete hypothetical.

21 You can answer, if you know.

22 THE WITNESS: Every call except  
23 for those that are required to be  
24 minimized.

25

1       QUESTIONS BY MR. STEPHENS:

2           Q.        Okay. Very good.

3                   And that's spelled out in the  
4     order that the judge -- the DEA and the  
5     US Attorney's Office present to the judge and  
6     the judge signs, right?

7           A.        Yes.

8           Q.        Okay. All right. Another form  
9     of electronic surveillance is a room bug.

10                  Are you familiar with a room  
11     bug?

12                  MR. BENNETT: Objection.

13                  Scope.

14                  He's not authorized to disclose  
15     confidential law enforcement  
16     investigative or intelligence-  
17     gathering techniques, the  
18     effectiveness of which would be  
19     impaired.

20                  You may answer this question  
21     yes or no only whether you are  
22     familiar with the term "a room bug."

23                  THE WITNESS: Yes.

24       QUESTIONS BY MR. STEPHENS:

25           Q.        Okay. A room bug is like a

1 Title 3 telephonic intercept. It's a device  
2 that's placed in a particular location and it  
3 records, right?

4 MR. BENNETT: You can answer  
5 that question yes or no only if you  
6 know.

7 THE WITNESS: Yes.

8 QUESTIONS BY MR. STEPHENS:

9 Q. Okay. And in comparison to  
10 DEA, which has the ability to apply to a  
11 judge for these wiretaps and room bugs,  
12 Walmart would not have the ability to apply  
13 to a judge for a room bug or a wiretap, fair?

14 MR. BENNETT: Objection. Calls  
15 for a legal conclusion.

16 You can answer in your personal  
17 knowledge, if you know.

18 THE WITNESS: That's correct.

19 QUESTIONS BY MR. STEPHENS:

20 Q. And would you agree that  
21 electronic surveillance can be an enormous  
22 help to DEA in determining whether a suspect  
23 is diverting controlled substances?

24 MR. BENNETT: Objection.  
25 Vague. Scope.

1                    You can answer in your personal  
2                    capacity if you have an opinion.

3                    THE WITNESS: Yes, it could be.

4                    QUESTIONS BY MR. STEPHENS:

5                    Q.         Okay. And based on your  
6                    30 years at DEA, are you aware of any  
7                    situation where Joe Rannazzisi or anyone else  
8                    who was running the Office of Diversion  
9                    Control ever authorized you or anyone else at  
10                  DEA to disclose to a registrant who could  
11                  help DEA in a diversion investigation the  
12                  information that DEA had obtained through  
13                  electronic surveillance?

14                  MR. BENNETT: Objection. Form.

15                  Scope. Compound.

16                  You're not authorized to  
17                  disclose any information regarding  
18                  specific DEA investigations or  
19                  activities.

20                  You may answer this question  
21                  yes or no only, if you understand.

22                  THE WITNESS: Could you restate  
23                  the question?

24                  QUESTIONS BY MR. STEPHENS:

25                  Q.         Sure.

11 THE WITNESS: No, I'm not.

12 QUESTIONS BY MR. STEPHENS:

13 Q. All right. Let's talk about  
14 number 6, and that will be information from  
15 state medical boards or state local law  
16 enforcement. Okay?

23 MR. BENNETT: Objection.

24 Scope.

25 You can answer yes or no only.

1 THE WITNESS: Yes.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Okay. Would you agree that  
4 private sector registrants like the companies  
5 that you've met here today do not have the  
6 ability to obtain information from state and  
7 local law enforcement investi -- state and  
8 local law enforcement regarding  
9 investigations that state and local law  
10 enforcement is conducting on suspected  
11 diverters?

12 MR. BENNETT: Objection. Form.

13 Incomplete hypothetical. Calls for  
14 speculation.

15 You can answer, if you have an  
16 opinion.

17 QUESTIONS BY MR. STEPHENS:

18 Q. Let me strike the question and  
19 ask a better question.

20 A. Okay.

21 Q. That question wasn't so  
22 artfully crafted, Mr. Mapes.

23 Are you aware of any situation  
24 during your tenure at DEA where state and  
25 local law enforcement shared information with

1 a registrant related to an investigation that  
2 state and local law enforcement was doing of  
3 a suspected diverter?

4 MR. BENNETT: Objection.

## 5 Scope.

6                          You can answer that question  
7                          yes or no only.

8 THE WITNESS: Yes.

9      QUESTIONS BY MR. STEPHENS:

10 Q. Okay. Would you agree that DEA  
11 can obtain information from state medical  
12 boards regarding investigations that the  
13 state medical board is conducting?

14 MR. BENNETT: You can answer  
15 that question.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. STEPHENS:

18 Q. Okay. Are you aware of any  
19 situation where a state medical board  
20 provided information to a non-law enforcement  
21 registrant related to investigation --  
22 pending investigations that the state medical  
23 board was conducting?

24 MR. BENNETT: You can answer  
25 that question yes or no only.

1 THE WITNESS: Yes.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Okay. Are you aware of any  
4 situation where Mr. Rannazzisi ever  
5 authorized you or anyone else at DEA to  
6 disclose to a registrant who could help DEA  
7 advance its diversion investigation with  
8 information that DEA had obtained from state  
9 and local law enforcement?

10 MR. BENNETT: Objection.

11 Scope. Vague.

12 You can answer that question  
13 yes or no.

14 THE WITNESS: No.

15 QUESTIONS BY MR. STEPHENS:

16 Q. Are you aware of any situation  
17 where Mr. Rannazzisi ever authorized you or  
18 anyone else at DEA to disclose to a  
19 registrant who could help DEA advance its  
20 diversion investigation with information that  
21 DEA had obtained from a state medical board?

22 MR. BENNETT: Objection.

23 Scope. Vague.

24 You can answer that question  
25 yes or no only.

1 THE WITNESS: No.

2 QUESTIONS BY MR. STEPHENS:

3 Q. Are you aware of anyone who was  
4 in the position of running the Office of  
5 Diversion Control who ever authorized you or  
6 anyone else at DEA to disclose to a  
7 registrant who could help DEA advance its  
8 diversion investigation with information that  
9 DEA had obtained from a state medical board?

10 MR. BENNETT: Objection.

11 Scope. Vague.

12 You can answer that question  
13 yes or no only.

14 THE WITNESS: No.

15 QUESTIONS BY MR. STEPHENS:

16 Q. Are you aware of anyone who was  
17 in the position of running the Office of  
18 Diversion Control who had ever authorized you  
19 or anyone else at DEA to disclose to a  
20 registrant who could help DEA advance its  
21 diversion investigation with information the  
22 DEA had obtained from state or local law  
23 enforcement?

24 MR. BENNETT: Objection.

25 Scope. Vague.

1                    You can answer that question  
2                    yes or no only.

3                    THE WITNESS: No.

4                    QUESTIONS BY MR. STEPHENS:

5                    Q.         Did private sector companies  
6                    such as Walmart or Walgreens or Rite Aid have  
7                    the ability to access NADDIS information?

8                    MR. BENNETT: You can answer  
9                    that question, if you know.

10                  THE WITNESS: No.

11                  QUESTIONS BY MR. STEPHENS:

12                  Q.         Did private sector companies,  
13                  Walmart, Walgreens, CVS, have the ability to  
14                  access DEA 6 reporting from DEA's databases?

15                  MR. BENNETT: You can answer  
16                  the question.

17                  THE WITNESS: Only through FOI  
18                  requests or discovery from a case or  
19                  something like that.

20                  QUESTIONS BY MR. STEPHENS:

21                  Q.         Okay. But DEA will not provide  
22                  responses, if you know, to FOIA requests  
23                  related to pending investigations?

24                  MR. BENNETT: Objection.

25                  Scope. Calls for speculation. Calls

1 for a legal conclusion.

2 You may answer based on your  
3 personal experience and personal  
4 knowledge while you were at DEA.

5 THE WITNESS: They have not  
6 provided that that I'm aware of.

7 QUESTIONS BY MR. STEPHENS:

8 Q. Okay. So information from  
9 NADDIS would be a seventh example where DEA  
10 agents can use that information, but private  
11 sector companies cannot obtain that  
12 information related to pending investigations  
13 where the registrant might be able to help  
14 DEA with its diversion investigation?

15 MR. BENNETT: Objection.

16 Vague. Form.

17 You can answer.

18 THE WITNESS: That's correct.

19 QUESTIONS BY MR. STEPHENS:

20 Q. Okay. So let's talk about  
21 ARCOS here briefly.

22 You testified a little bit  
23 about ARCOS earlier.

24 Do you recall that?

25 A. Yes.

1                   Q.         Okay. Now, DEA could analyze  
2         ARCOS information from all registrants to  
3         develop leads on potential diverters during  
4         your tenure at DEA; is that fair?

5                   MR. BENNETT: You can answer  
6         it.

7                   THE WITNESS: Yes, it is.

8         QUESTIONS BY MR. STEPHENS:

9                   Q.         Okay. And was that information  
10      helpful in advancing DEA diversion  
11      investigations?

12                  MR. BENNETT: Objection.

13                  Vague.

14                  You can answer.

15                  THE WITNESS: Yes, it was.

16         QUESTIONS BY MR. STEPHENS:

17                  Q.         Okay. During your tenure at  
18      DEA, did DEA share ARCOS information it  
19      received from one distributor with all other  
20      distributors?

21                  MR. BENNETT: You can answer  
22      that question.

23                  THE WITNESS: No.

24         QUESTIONS BY MR. STEPHENS:

25                  Q.         So did Mr. Rannazzisi, when he

1 ran the Office of Diversion Control, ever  
2 authorize you or anyone else, to your  
3 knowledge, at DEA to disclose to a registrant  
4 who could help advance DEA's investigation of  
5 a suspected diverter with information from  
6 ARCOS that related to information that had  
7 been supplied to DEA from other registrants?

8 MR. BENNETT: Objection.

9 Scope. Vague. Form.

10 You can answer that question  
11 yes or no only.

12 THE WITNESS: No.

13 QUESTIONS BY MR. STEPHENS:

14 Q. To your knowledge, did anyone  
15 who ran the Office of Diversion Control at  
16 DEA during your tenure there ever authorize  
17 you or anyone else at DEA to disclose to a  
18 registrant who could help advance DEA's  
19 investigation of a suspected diverter with  
20 information from ARCOS that related to  
21 information that had been supplied to DEA  
22 from other registrants?

23 MR. BENNETT: Objection. Form.

24 Scope. Vague.

25 You can answer that question

1 yes or no only.

2 THE WITNESS: No.

3 QUESTIONS BY MR. STEPHENS:

4 Q. Okay. Move on to my next  
5 topic.

6 You testified a little bit  
7 earlier about your background and how you had  
8 worked in field divisions and then had gone  
9 to headquarters, right?

10 A. Yes.

11 Q. And you also provided some  
12 information about how DEA is structured and  
13 how certain squads have DEA enforcement  
14 agents and other squads have DEA diversion  
15 investigators.

16 Do you recall that testimony?

17 A. Yes.

18 MR. BENNETT: Objection.

19 Mischaracterizes testimony.

20 MR. STEPHENS: I don't think  
21 so, but...

22 QUESTIONS BY MR. STEPHENS:

23 Q. You also -- during your tenure  
24 at DEA, when you were retiring, is it fair  
25 that there were about 20 field divisions or

1 so throughout the country at DEA?

2 MR. BENNETT: You can answer.

3 THE WITNESS: Yes.

4 QUESTIONS BY MR. STEPHENS:

5 Q. And each division is run by a  
6 special agent in charge?

7 A. It is.

8 Q. And the special agent in charge  
9 is known as the SAC, the S-A-C?

10 A. Yes.

11 Q. Okay. And that's the highest  
12 level at a field division, right?

13 A. Yes.

14 Q. Okay. And there are a couple  
15 other high-level positions, one of which  
16 would be the assistant special agent in  
17 charge, the ASAC; is that fair?

18 A. Fair.

19 Q. And another high-level position  
20 in the field is what they call a RAC, a  
21 resident agent in charge, fair?

22 A. Yes.

23 Q. Okay. Now, based on your  
24 experience at DEA, how many of -- how many  
25 SACs can you identify that came up through

1 the ranks as a diversion investigator?

2 A. None.

3 Q. Zero?

4 A. Yeah.

5 Q. Okay. Based on your career,  
6 how many ASACs can you identify that came up  
7 through the ranks as a diversion investigator  
8 as opposed to a special agent on the  
9 enforcement side?

10 A. An ASAC position is a special  
11 agent position, the equivalent in diversion  
12 is the diversion program manager.

13 Q. Okay. So can you identify any  
14 ASAC who came up through the ranks as a  
15 diversion investigator during your 30 years  
16 at DEA?

17 A. There were a couple who were  
18 diversion investigators and then went to  
19 become special agents and ended up being  
20 ASACs, but they were -- they were agents at  
21 that point.

22 Q. Okay. So there were two that  
23 you can recall?

24 A. A couple I can recall, yes.

25 Q. Okay. All right. Now,

1 enforcement agents are special agents, right?

2 That's how they're referred to within DEA?

3 A. Yes.

4 Q. And the enforcement agents  
5 investigate drug trafficking organizations  
6 like the Medellin cartel or the Sinaloa  
7 cartel, fair?

8 A. Among their own duties, yes.

9 Q. Okay. Diversion investigators,  
10 by contrast, focus on diversion  
11 investigations; is that fair?

12 A. Yes.

13 Q. Now, at DEA, special agents can  
14 also work diversion investigations, right?

15 A. Yes.

16 Q. There is no rule, there's no  
17 law, there's no regulation that says  
18 enforcement agents are prohibited from  
19 helping diversion investigators work  
20 diversion investigations; is that fair?

21 A. That's correct.

22 Q. Do you think that diversion  
23 would have been further reduced during your  
24 time at DEA if the special agents in charge  
25 at the field division level would have made

1 diversion investigations more of a priority?

2 MR. BENNETT: Objection.

3 Scope. Incomplete hypothetical.

4 Calls for speculation.

5 This is not a 30(b)(6) witness,

6 so you are not authorized to answer on

7 behalf of DEA.

8 To the extent that you have a

9 personal opinion in your personal

10 capacity, you may answer the question.

11 THE WITNESS: No, I really

12 don't know if that would have made a

13 difference or not.

14 QUESTIONS BY MR. STEPHENS:

15 Q. Okay. Well, for example, would  
16 you expect that supervisors in the field  
17 divisions like SACs, ASACs and RACs should be  
18 familiar with suspicious activity reports?

19 MR. BENNETT: Objection.

20 Scope. Incomplete hypothetical.

21 Calls for speculation.

22 This is not a 30(b)(6) witness

23 who can speak on behalf of the DEA.

24 To the extent that you have a

25 personal opinion, you may answer in

1                   your personal capacity.

2                   THE WITNESS: I don't believe  
3                   the SACs and ASACs would be involved  
4                   in something at that level and that  
5                   detail.

6                   QUESTIONS BY MR. STEPHENS:

7                   Q.         Okay. How about US Attorney's  
8                   Offices, during your 30 years at DEA, do you  
9                   think that the US Attorney's Offices devoted  
10                  the level of resources that you wanted to  
11                  diversion cases as opposed to enforcement  
12                  cases against drug trafficking organizations?

13                  MR. BENNETT: Objection.

14                  Scope. Incomplete hypothetical.

15                  Calls for speculation.

16                  This is not a 30(b)(6) witness  
17                  who can answer on behalf of DEA or  
18                  give DEA's position.

19                  To the extent that you have a  
20                  personal opinion, you may give your  
21                  opinion in your personal capacity.

22                  THE WITNESS: Personally, we  
23                  always had good support from the  
24                  US Attorney's Offices.

25

1       QUESTIONS BY MR. STEPHENS:

2           Q.       Can you name any chief of  
3       narcotics for any of the 94 US Attorney's  
4       Offices during your tenure at DEA, based on  
5       your experience, who prosecuted more  
6       diversion investigations than enforcement  
7       matters against drug trafficking  
8       organizations?

9                   MR. BENNETT: Objection. Form.

10                  Scope.

11                  You can answer.

12                  THE WITNESS: I don't know how  
13       many enforcement cases they did versus  
14       diversion cases, so I really don't  
15       know.

16       QUESTIONS BY MR. STEPHENS:

17           Q.       Can you name any OCDETF chief,  
18       who ran any of the nine OCDETF regions in the  
19       United States and the Caribbean during your  
20       tenure at DEA, whose OCDETF team prosecuted  
21       more diversion investigations compared  
22       against enforcement cases brought by special  
23       agents against drug trafficking  
24       organizations?

25                   MR. BENNETT: Objection. Form.

1 Scope.

2 You can answer.

3 THE WITNESS: Again, I don't  
4 know the total of the numbers of  
5 cases, so I couldn't say.

6 QUESTIONS BY MR. STEPHENS:

7 Q. Okay. Would you agree that  
8 within DEA, both diversion investigators and  
9 enforcement special agents are investigators  
10 within DEA?

11 MR. BENNETT: Objection.

12 Vague.

13 THE WITNESS: Yes.

14 QUESTIONS BY MR. STEPHENS:

15 Q. Okay. Based on your 30 years  
16 of experience and what you wanted to  
17 accomplish in anti-diversion efforts, what  
18 percentage of mix between how many -- what  
19 percent of enforcement special agents that  
20 were allocated at DEA against what percentage  
21 of diversion investigators there were at DEA  
22 was the right mix?

23 MR. BENNETT: Objection. Form.

24 Objection. Scope. Objection. Calls  
25 for speculation.

1       QUESTIONS BY MR. STEPHENS:

2           Q.       Let me re -- fair enough,

3       Counsel. Let me restate it.

4                   So during your tenure, 30-year  
5       tenure, at DEA working diversion  
6       investigations, for DEA to be as effective as  
7       possible in its anti-diversion efforts, what  
8       percentage of authorized investigator slots  
9       should have been allocated to diversion  
10      investigators as opposed to special agents?

11                  MR. BENNETT: Objection. Form.

12                  Objection. Scope.

13                  To the extent that you have a  
14       personal opinion, you may give it in  
15       your personal capacity.

16                  But you are not a 30(b)(6)  
17       witness, and you are not authorized to  
18       speak on behalf of DEA's allocation of  
19       resources.

20                  THE WITNESS: And I really  
21       don't know what that -- allocation  
22       would be best.

23       QUESTIONS BY MR. STEPHENS:

24           Q.       During your tenure at DEA, did  
25       you think that there should have been more

1 diversion investigators in the mix working  
2 diversion investigations as opposed to  
3 enforcement special agents focused on drug  
4 trafficking organizations?

5 MR. BENNETT: Objection.

6 Scope.

7 You can answer in your personal  
8 capacity if you have a personal  
9 opinion, but you may not speak on  
10 behalf of DEA.

11 THE WITNESS: My opinion is no,  
12 because we usually had agents to work  
13 on the cases with us when necessary.

14 QUESTIONS BY MR. STEPHENS:

15 Q. What percentage of time do you  
16 think enforcement special agents, during your  
17 tenure at DEA, spent working on diversion  
18 matters as opposed to enforcement matters  
19 against drug trafficking organizations?

20 MR. BENNETT: Objection.

21 Foundation. Calls for speculation.

22 You can answer, if you know.

23 THE WITNESS: I really don't  
24 know what percentage. A small  
25 percentage.

1 MR. STEPHENS: Okay. Let me  
2 take a quick break and see if we are  
3 done for the night.

6 (Off the record at 5:47 p.m.)

7                           VIDEOGRAPHER: Going back on  
8 record. Beginning of Media File 11.  
9                           The time is 5:48.

10 QUESTIONS BY MR. STEPHENS:

11 Q. Mr. Mapes, thank you. I just  
12 have a few more questions for you before we  
13 wrap up for the evening.

14 I had asked you some questions  
15 earlier on about who you recall meeting with  
16 between 2005 and 2007 in those 12 or so  
17 distributor briefings that you gave.

18 Do you recall that testimony?

19 A. Yes.

20 Q. Okay. Let me ask a couple of  
21 follow-up questions.

22 Did you meet with CVS in a  
23 Distributor Initiative meeting between 2005  
24 and 2007?

25 A. No.

1 Q. Did you meet with Rite Aid?

2 A. No.

3 Q. Did you meet with Walgreens?

4 A. No.

5 MR. STEPHENS: Okay. Thank

6 you. I have no further questions.

7 I would like to state for the

8 record that we're reserving our full

9 90 minutes for any potential redirect.

10 And with that, I'm done. Thank  
11 you.

12 MR. BENNETT: Okay.

13 MS. LEVY: This is Jennifer  
14 Levy for the manufacturing defendants.  
15 We will decline to ask questions today  
16 and reserve any questions we may have  
17 until the 90-minute redirect we may do  
18 tomorrow.

19 VIDEOGRAPHER: All right. This  
20 concludes the deposition for today.  
21 Going off the record. The time is  
22 5:50.

23 (Off the record at 5:50 p.m.)

24 - - - - -

25

1 CERTIFICATE  
2

3 I, CARRIE A. CAMPBELL, Registered  
4 Diplomate Reporter, Certified Realtime  
5 Reporter and Certified Shorthand Reporter, do  
hereby certify that prior to the commencement  
of the examination, Michael Mapes, was duly  
sworn by me to testify to the truth, the  
whole truth and nothing but the truth.

6  
7 I DO FURTHER CERTIFY that the  
foregoing is a verbatim transcript of the  
8 testimony as taken stenographically by and  
before me at the time, place and on the date  
9 hereinbefore set forth, to the best of my  
ability.  
10

11 I DO FURTHER CERTIFY that I am  
neither a relative nor employee nor attorney  
nor counsel of any of the parties to this  
12 action, and that I am neither a relative nor  
employee of such attorney or counsel, and  
13 that I am not financially interested in the  
action.  
14  
15  
16

*Carrie A. Campbell*

17 CARRIE A. CAMPBELL,  
18 NCRA Registered Diplomate Reporter  
Certified Realtime Reporter  
Notary Public  
19 Dated: July 11, 2019  
20  
21  
22  
23  
24  
25

1 INSTRUCTIONS TO WITNESS

2

3                           Please read your deposition over  
4 carefully and make any necessary corrections.

5 You should state the reason in the  
6 appropriate space on the errata sheet for any  
7 corrections that are made.

8                   After doing so, please sign the  
9       errata sheet and date it. You are signing  
10      same subject to the changes you have noted on  
11      the errata sheet, which will be attached to  
12      your deposition.

13                           It is imperative that you return  
14 the original errata sheet to the depositing  
15 attorney within thirty (30) days of receipt  
16 of the deposition transcript by you. If you  
17 fail to do so, the deposition transcript may  
18 be deemed to be accurate and may be used in  
19 court.

20

21

22

23

24

25

1 ACKNOWLEDGMENT OF DEPONENT

2

3

4

4 I, \_\_\_\_\_, do

hereby certify that I have read the foregoing  
5 pages and that the same is a correct  
transcription of the answers given by me to  
6 the questions therein propounded, except for  
the corrections or changes in form or  
7 substance, if any, noted in the attached  
Errata Sheet.

8

9

10

11

12

Michael Mapes

DATE

13

14

15

16 day of 20

17 Mammals from the Americas

MY COMMISSION EXPIRES.

— 8 —

21

22

23

24

25

1

ERRATA

2

3 PAGE LINE CHANGE / REASON

4 \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 \_\_\_\_\_

20 \_\_\_\_\_

21 \_\_\_\_\_

22 \_\_\_\_\_

23 \_\_\_\_\_

24 \_\_\_\_\_

25 \_\_\_\_\_

1

-----  
LAWYER'S NOTES  
-----

2

3 PAGE LINE

4 \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 \_\_\_\_\_

20 \_\_\_\_\_

21 \_\_\_\_\_

22 \_\_\_\_\_

23 \_\_\_\_\_

24 \_\_\_\_\_

25 \_\_\_\_\_